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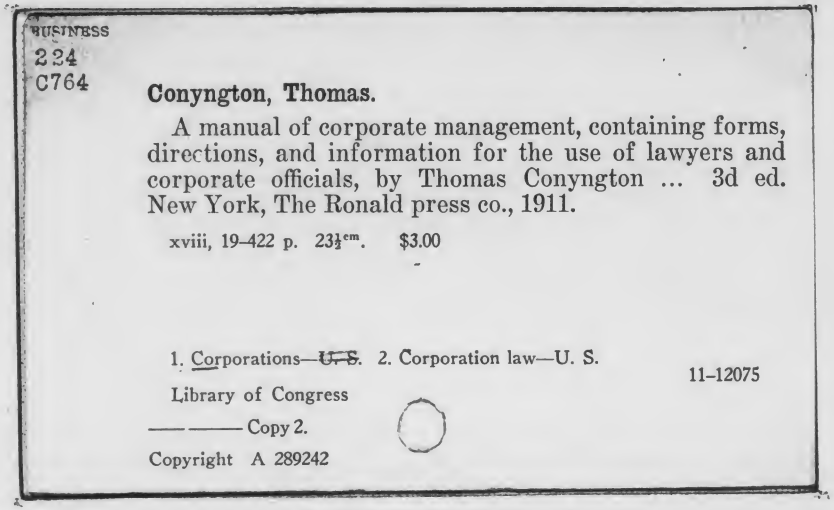

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A MANUAL

OF

CORPORATE MANAGEMENT

CONTAINING

FORMS, DIRECTIONS, AND INFORMATION FOR THE USE OF LAWYERS AND CORPORATE OFFICIALS

BY

THOMAS CONYNGTON OF THE NEW YORK BAR

Author of "Corporate Organization," "Partnership Relations," etc.

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PREFACE.

The purpose of the present volume is to furnish a compact, practical and conveniently-arranged work on corporate management for the use of lawyers and corporation officials. The formation of corporations is discussed only so far as requisite for a clear presentation of the requirements and practice of modern corporate procedure, the general subject having already been considered in the author's companion volume, "Corporate Organization."

Any complete discussion of the local statutes that modify the general principles of corporation law in the various states has been utterly precluded by the limits of the present volume. Therefore, while frequent reference is made to these statutes, they must in each state be consulted for an accurate determination of local regulations and requirements. Wherever the term "statutes" is used in the present volume, reference is intended, unless otherwise specified, to the statutes enacted by the legislatures of the various states.

The forms of the present volume have been increased in number until they now cover practically the entire range of ordinary corporate procedure. The author believes that they will be found authoritative, convenient and of continuing value. As in preceding editions, they are given as precedents and without the usual blanks for variable matter. A better idea of the form as a whole is thereby conveyed. Also, the changes necessary to adapt a form to any special need are more readily made from a completed

instrument than from one disjointed by frequent and sometimes puzzling blanks.

In conclusion, the author wishes to express his sincere appreciation of the very gratifying reception accorded the preceding editions of the present work. He can hardly hope for a more favorable reception for the present volume, but he trusts that the additions that have been made, both in text and forms, and the changes of arrangement, have resulted in a more valuable work.

The author has taken advantage of the present reprint of "Corporate Management" to make a few minor corrections in its text. Beyond this no change seemed necessary or desirable, the general principles laid down in the volume being in accord with the present trend of legislation and adjudication.

THOMAS CONYNGTON.

198 Broadway, New York,
March 25, 1911.

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18. Scope of By-laws.
19. Adoption of By-laws.

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CORPORATE MANAGEMENT.

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Practically there are but two forms of business association,—the partnership and the stock corporation. A few states have authorized curious organizations of indeterminate legal nature, such as the statutory joint-stock companies of New York and the partnership associations of Pennsylvania and Michigan. These are, however, of doubtful advantage and have never attained any extended use.

§ 2. Joint-Stock Companies.

A joint-stock company is practically a partnership, authorized by law to act under a corporate name and to issue stock to its members. This stock represents the respective interests of the members, but these latter are liable for the debts of the company exactly as in an ordinary partnership. The arrangement is of doubtful utility. In

some states the term is loosely and incorrectly used to designate an ordinary stock corporation.

§ 3. Corporations.

A corporation is an association of individuals authorized by law to act as a whole under a corporate name for some particular purpose or purposes. It cannot be formed as is a partnership, merely by the contract or agreement of the parties, but its organization must be expressly authorized by law and be evidenced by a charter, or certificate of incorporation, granted by the State. (See Ch. XXIV, "Charter Forms.")

Corporations are of many kinds, designated according to their object, as social, financial, business, manufacturing, municipal, transportation, religious, charitable, educational, and the like. All these may be divided into two general classes,—(1) membership corporations and (2) stock corporations. Membership corporations, which include churches, colleges, governments, municipalities, and societies and associations for other than business purposes, are the original form.

§ 4. Stock Corporations.

Stock corporations are those in which the authorized capital, known as the "capital stock," is divided into shares, usually equal, and these shares, designated as "stock," represent the respective interests of the owners or "stockholders" in the corporation.

Stock corporations formed to carry on mining, manufacturing or mercantile enterprises, are sometimes designated as "business" corporations to distinguish them from companies formed for banking or insurance, which are termed "financial" corporations, and from railroad, telegraph, ferry, and other so-called "public utilities" corporations. Financial and public utilities corporations are

usually subject to much stricter regulations than business corporations, but enjoy more extensive powers. The present volume treats specifically of the management of business corporations, though in most particulars its rules are equally applicable to all other classes of stock corporations.

The word "company" is commonly used to designate a corporation and is so employed in the present volume.

§ 5. Stock.

The capital of a stock corporation is represented by shares, referred to as "shares of stock," and the whole of these shares makes up the capital stock.[1] The amount of this capital stock is fixed by the charter of the company. One person may own any amount of stock in a company, even to the extent of the entire capital stock.[2] (See Part II, "Stock.")

§ 6. Corporate Regulation and Organization.

A corporation is a creature of the law. It has no powers and no rights save those given it by the law. To ascertain the powers, rights and limitations of any particular corporation, reference must be had to the following sources, given here in the order of their authority: (1) The constitution and statutes of the state wherein it was formed and has its domicile, and in which it is known as a domestic corporation; (2) the charter whereby the corporation was formed; (3) the by-laws, which are the legislation of the corporation itself. If the corporation is carrying on its business in another state from that in which it was incorporated, it is known there as a foreign corporation and the statutes of this other state must be consulted to determine its corporate rights and powers therein.

[1] Person, etc. Co. v. Lipps, 219 Pa. St., 99 (1907).
[2] Comm's v. Monongahela, etc. Co., 216 Pa. St. 108 (1906).

§ 7. The Statutory Laws.

The first corporations were formed by special acts of the legislature or other law-making authorities, the charters so granted being known as special charters. The power to grant these special charters resulted in so much favoritism, monopoly and other abuse that it has been gradually withdrawn or superseded, and in this country general laws now exist in every state, under which corporations may be formed. In some states the legislatures are still permitted to grant special charters, but in most of the states special charters for business corporations have been forbidden by constitutional provisions and such corporations may be formed only under the general laws.

In every state there is a more or less voluminous body of legislation relating to corporations. These laws prevail in their respective states but all follow the same general lines, varying only in details, such as the procedure for obtaining charter, fees charged, notices to be given for annual meetings, reports required, etc., etc.

§ 8. Charter and By-Laws.

The charter, or certificate of incorporation, is the fundamental law of the corporation, answering to the constitution of a state or nation. From it are derived the existence and all the powers of the corporation. (See Ch. II, "The Charter.")

By-laws are the quasi-permanent rules of corporate action. They are usually adopted by the duly assembled stockholders, though the board of directors has this power when specially authorized thereto by the charter, or by the laws of the state. (See Ch. III, "By-Laws.")

§ 9. Directors and Officers.

The directors are elected by the stockholders at the annual meeting, and are the governing authority of the

corporation. The number of directors is commonly prescribed in the charter, and for convenience is usually an odd number, from three upward. They have charge of the property and business of the company. (See Part IV, "Directors and Officers.")

The officers of the company are usually elected by the directors at their first meeting in each year. The necessary officers of a corporation are a president, a treasurer and a secretary. These last two officers are often filled by one person. In the larger corporations, vice-presidents, assistants to the treasurer and secretary, and other officers are elected.

§ 10. Advantages of Corporate Form.

The principal advantages of the corporate form are:

(1) *Limited Liability.* Before any payment has been made on his subscription, a subscriber to the stock of a corporation is liable for the debts of the company to the par value of his stock. As his payments are made his liability decreases until, on payment of the full par value, his stock becomes "full-paid," and, as a rule, he is no longer liable for any debts or obligations of the company. Neither is anyone who thereafter buys such stock liable, as once full-paid it is always full-paid. This is the great advantage of corporate investment, rendering it possible for a man to engage in a corporate enterprise and know at all times exactly how much he is risking. In a partnership, on the contrary, each partner, no matter how small his interest, is liable for every firm debt. (See §§ 48, 73, 74.)

(2) *Legal Entity.* A corporation is considered to have a distinct entity or legal existence under its corporate name. Hence it can sue and be sued in this corporate name, without its stockholders joining or being joined. Also it may contract with its members and bring suit against them or be sued by them. This separate legal

entity is a great practical advantage from a business standpoint.

(3) *Permanence.* The system of stock divided into shares gives the corporation a permanence and stability not found in the partnership. The members of a corporation may continually change, while the corporation itself remains unaffected. No disagreement, disability or bankruptcy of its stockholders need disturb it. The death or insanity of members does not destroy it. On the contrary it goes on forever unless it voluntarily dissolves, becomes insolvent, or the period of existence fixed by its charter expires.

(4) *Convenience of Stock.* A stockholders' interest in a corporation is represented by transferable certificates, by means of which he may readily sell his interest in whole or in part, or use it as collateral upon which to borrow money. In a partnership, on the contrary, it is difficult for a partner to sell his interest, and impossible for him to use it as collateral. It is hard to exaggerate the great business convenience of corporate stock represented by negotiable certificates.

(5) *Business Management.* The control of the business of a corporation by a board of directors elected by the stockholders and acting through officers and agents appointed by the board is practical and most satisfactory. It secures an efficient, responsible and representative management not found in any other form of business association.

(6) *Ease of Securing Capital.* Because of the general safety and efficiency of the corporate system, it is possible to induce people to invest in the stock of a corporation when they would not for a moment consider an investment in the same enterprise conducted as a partnership. A mine, a railroad or an invention can frequently secure capital under the corporate form when it would otherwise be absolutely impossible.

CHAPTER II.

THE CHARTER.

§ 11. The Charter.

A corporation is created by a charter granted by the State. This instrument is also known as the certificate of incorporation; also as the articles of association. Legally there is no difference in the terms. In this work, the word charter is usually employed because it is the oldest term and also the shortest. The formalities incident to securing a charter are regulated by statute and vary in the different states.

The purposes for which a corporation is to be formed must be set forth in the charter and must be such as are allowed by the laws of the particular state. Ordinary business corporations are usually permitted wide latitude as to their purposes which in most of the states may include as many different businesses or lines of activity as may be desired. Public utility and financial corporations, on the other hand, are usually held rigorously to the one purpose and are hedged about with many rules and restrictions.

§ 12. Amendment of Charter.

The charter is a contract between the state and the stockholders of the corporation to which it is granted, and can be changed only by agreement of the parties thereto, or in accordance with the terms under which it was

granted. Most of the States, however, expressly reserve the power to amend corporate charters,—a power which must be exercised reasonably.[1]

A charter is also a contract between the corporation and its stockholders and therefore, under the common law, to be amended only by unanimous vote of all the stockholders. In most of the states, however, the statutes provide for amendment of charters by vote of some designated proportion of the stockholders.[2] These statute provisions are effective in spite of the contract nature of the charter, since those who incorporate under such laws, or who thereafter purchase the stock of such corporations, are held to have agreed to the statutory innovation on the common law.[3]

Under the procedure obtaining in most of the states, an amendment to a charter must be authorized by the stockholders and be approved by the directors, the manner of securing and indicating such authorization and approval being prescribed by the statutes. The amendment is then filed in the same manner and with the same formalities as was the original charter and is not effective until allowed by the state authorities. A fee corresponding to the organization tax must also be paid. No matter may be introduced by amendment that would not have been allowed in the original charter. The statutes of the various states prescribe with more or less precision the scope of amendments, which usually include changes of the corporate name or purposes, increase or decrease of stock, change of par value of shares, increase or decrease of the number of directors and change of principal office.

The whole matter of amendment is a difficult one, varying in the different states and requiring the services of a competent attorney. (See § 67.)

[1] N. Y. & N. E. R. R. v. Bristol, 151 U. S. 556 (1894).
[2] Hope, etc. Ins. Co. v. Beckmann, 47 Mo. 93 (1870); Marietta, etc. R. R. v. Elliott, 10 O. St. 57 (1859); Mercantile, etc. Co. v. Kneal, 51 Minn. 263 (1892).
[3] Smith v. Eastwood, etc. Co., 58 N. J. Eq. 331 (1899).

§ 13. Usual Charter Provisions.

The usual specifications of a charter are as follows:

(*a*) The corporate name.
(*b*) The purpose or purposes of the corporation.
(*c*) The capital stock with number and par value of shares specified.
(*d*) Any classification of the stock.
(*e*) Location of principal office of the corporation.
(*f*) Duration of the corporation.
(*g*) The number of directors, and in some cases the names of those to serve for the first year.

§ 14. Special Charter Provisions.

In some states the laws, while prescribing certain provisions which must appear in the charter, also permit the insertion of any other provisions not inconsistent with law which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation. This allows matters of corporate regulation which are desired to be permanent, to be included in the charter and special powers or privileges not usually available may also be secured in the same way. Thus, cumulative voting may be provided for; stock may be classified with special rights and privileges; additional powers may be given directors, or their usual powers may be abridged; corporate indebtedness may be limited, or maximum salaries of officers may be prescribed.

Charter provisions may be changed only by means of amendment and these special provisions are therefore given a permanence that could not ordinarily be secured in any other way. Most of the usual special charter provisions might be incorporated in the by-laws with equal effect but not with equal permanence, as the changing of the by-laws is a comparatively simple matter, while an amendment of the charter is formal and difficult.*

*For full discussion of special charter provisions, see Conyngton on Corporate Organization, Ch. XIX.

§ 15. Incidental Corporate Powers.

In addition to the express powers and privileges conferred by a charter, and as an incident of corporate existence, every corporation has the following powers, whether specified in the charter or not:

(1) *To Sue or Be Sued.* A corporation as a legal entity, or artificial person, may become a party to a suit under its corporate name. In this it differs from the partnership in which every member must be made a party to litigation.

(2) *To Use a Seal.* The use of the corporate seal is not so highly esteemed as it was in former days. The seal is, however, still an important corporate property, and is used on stock certificates, deeds and other formal instruments. (See §153.) It usually shows the corporate name, also the year and the state in which the company was incorporated. These are customary, but not essential, as a seal with any other wording or device, if properly adopted, is thereby made the legal seal of the corporation. Any desired designs, mottoes or ornamentation may appear on the seal and will neither add to nor detract from its legal effectiveness. It is customary to prescribe the details of the corporate seal in the by-laws, the provision being usually so worded as to serve as a formal adoption of the described seal. (See Form 24, Art. VI, § 1.)

(3) *To Buy, Sell and Hold Property.* This power is possessed by all corporations as far as may be necessary to carry out the corporate purposes. In some states by express provision the power is given more broadly and to almost the same extent as possessed by individuals, while in other states it is narrowed, as in West Virginia, where the corporate holdings of land are limited to ten thousand acres, unless expressly otherwise provided in the charter, and in Texas where real property, save that necessary for

the corporate purposes must be alienated within fifteen years from the time of its acquisition.

(4) *To Appoint Directors, Officers and Agents.* This power is essential, as in no other way could the corporation act. Directors are elected by the stockholders. Officers are usually elected or appointed by the board of directors, and other agents are appointed either by the board, or by the officers under instructions from the board.

(5) *To Make By-Laws.* The charter powers and limitations are usually expressed in general terms. To provide for the details of corporate procedure and to supplement the charter provisions, the stockholders pass by-laws regulating the action of the directors and officers, and, generally, the conduct of the company. (See Ch. III, "By-Laws.")

(6) *To Dissolve the Corporation.* A corporation has power at common law to dissolve itself by the unanimous agreement or consent of all its stockholders. In many states the statutes provide that a corporation may be dissolved with the consent of a specified proportion of its stockholders. To accomplish this the statutory proceedings in the particular state must be closely followed. (See Ch. XXI.)

(7) *To Do All Things Necessary.* This power includes most of the other powers. Having been given the right to conduct some particular business, this carries with it the right to do all things necessary thereto. For instance, the right to hold real property is not usually held to be a corporate right, save when expressly conferred, yet, if it is necessary to buy land for the purposes of the corporation's authorized business, it can be done. The general right to do all things necessary has been liberally construed, and today there are very few things possible to a partnership or an individual that cannot be done by a corporation.

Further, under most of the modern codes of corporate law, it is permitted to draw the charter so broadly as to secure almost any power that could possibly be desired.

§ 16. Things "Ultra Vires."

A corporation's powers are defined by its charter, and when it goes beyond these, its acts and contracts are unauthorized and are said to be *"ultra vires."* Technically such contracts are illegal and the corporation cannot enforce them against others, although they may sometimes be enforced against the corporation, and directors and officers may make themselves personally liable for involving the corporation in such transactions. Corporate creditors and stockholders also have the right to object to *ultra vires* acts. When, however, all the stockholders consent and the corporation has no creditors, there are very few legitimate business transactions that may not be undertaken safely by a private corporation even though beyond the letter of its charter.[4] Also it may be said that, owing to the exceedingly broad powers granted in most modern charters, the doctrine of *ultra vires* is now of much less importance than formerly.

Where parties contracting with a corporation have performed their part of the contract, the corporation will not be allowed to evade its obligations by the plea of *"ultra vires."*[5]

[4] Bath Gaslight Co. v. Claffy, 151 N. Y. 24 (1896); Little v. Garabrant, 90 Hun. (N. Y.) 404 (1895); Aff'd 153 N. Y. 661 (1897); Fitchett v. Murphy, 46 App. Div. (N. Y.) 181 (1899); Groh's Sons v. Groh, 80 App. Div. (N. Y.) 85 (1903).
[5] Vought v. Eastern Bldg. & Loan Assn. 172 N. Y. 508 (1902); N. Y. Bank Note Co. v. Kidder, etc. Co. 192 Mass. 391 (1906).

CHAPTER III.

THE BY-LAWS.

§ 17. Nature of By-Laws.

By-laws are the quasi-permanent regulations of a corporation as distinguished on the one hand from the more permanent provisions of its charter, which can be changed only by formal statutory procedure, and, on the other, from the less permanent provisions of motions and resolutions, which usually apply only to particular acts or occasions, or to matters of minor importance, and may be readily changed.

By-laws are subordinate in authority to the constitution and statutes of the state in which the company is organized or transacts its business, and also to the charter of the company, but are superior to motions and resolutions. Hence, if a by-law conflicts with any of these higher authorities, it is void,[1] but if it conflicts with a motion or resolution, the by-law prevails.

By-laws must be reasonable, equitable and in conformity with public policy, or they are of no effect.[2] (See § 68.) Thus a by-law giving the majority interests of a corporation rights and privileges not accorded the minority is illegal, as it is not in the power of the majority to favor themselves or oppress the minority by unjust or unfair regulations.[3] Nor would a by-law prohibiting the

[1] 3 Clark & Marshall on Corp., § 638, and cases there cited.
[2] People v. Throop, 12 Wend. (N. Y.) 183 (1834); People v. Medical Society, 24 Barb. (N. Y.) 570 (1857); People's, etc. Bank v. Superior Court, 104 Cal. 649 (1894); Thousand I. P. Assn. Tucker, 173 N. Y. 203 (1903).
[3] Kent v. Quicksilver M. Co., 78 N. Y. 159 (1879); Ireland v. Globe Milling Co., 21 R. I. 9 (1898).

stockholders from parting with their stock be effective, as such by-laws are held to be against public policy.

By-laws, so long as within the corporate powers, are effective and binding on both stockholders and officials of the corporation. They are not, however, effective as to third persons who have no connection with the company and have no knowledge of the by-law provisions. Thus, if the corporate officials enter into contracts which are apparently within their own power, but are in fact expressly forbidden by the by-laws, such contracts are binding on the corporation if the other party is unaware of the by-law prohibition. The officials who have so wilfully disregarded the by-laws are responsible to the corporation, but the corporation cannot repudiate their contracts when made under such conditions.

By-laws may ordinarily be repealed by proper procedure but occasionally a by-law is passed as a consideration for subscriptions to stock or under other conditions that render it a contract obligation, not susceptible to repeal as are other by-laws.[4] Thus as a condition precedent to a large subscription to stock of the company, a by-law might be passed insuring to the minority stockholders certain representation on the board of directors. This by-law could not thereafter be repealed against the objections of the parties whose subscriptions were conditioned upon its adoption. It has also been held that a by-law providing for cumulative voting cannot be repealed in the face of objection.[5]

§ 18. Scope of By-Laws.

The scope and detail of any set of by-laws will depend upon the size of the corporation, the rights of the minority.

[4] Kent v. Quicksilver M. Co., 78 N. Y. 159 (1879); Blue Mt. Forest Assn. v. Borrowe, 51 Atl. Rep. 670 (N. H.) (1901); Loewenthal v. Rubber Reclaiming Co., 52 N. J. Eq. 440 (1894).

[5] Blue Mt., etc. Assoc. v. Borrowe, 51 Atl. Rep. (N. H.) 670 (1901); Loewenthal v. Rubber Co., 52 N. J. Eq. 440 (1894).

and the relation of the officers and directors to the business. Thus if all or nearly all the stock is owned by a few men, who compose the board of directors and are themselves officers of the company and are devoting their entire time to its affairs, the by-laws might with safety be few and simple and general in their terms. On the other hand, if the stockholders are numerous and widely scattered, the board of directors large and unwieldly, the enterprise important and its actual management in the hands of committees and officers, the by-laws should be full, explicit and carefully adapted to the circumstances of the particular corporation. In brief, the scope and details of the by-laws will increase as the size, importance and liability of friction in the management of the corporation increase.

§ 19. Adoption of By-Laws.

The grant of a charter confers without specific mention the power to make by-laws. This power, unless otherwise provided by the statutes of the particular state or the charter of the corporation, belongs to the stockholders alone.[6] These may, if they desire, delegate the power to the directors.

In some states the statutes confer more or less extended powers to make by-laws upon the directors, the statute provisions varying in the different states. In some, as in New Jersey, North Dakota and Pennsylvania, the statutes merely provide that the directors may be given this power by charter provision or by action of the stockholders. In other states, as in New York and Minnesota, they are given power to make by-laws in conformity with or subordinate to those made by the stockholders, but in some few instances, as in Illinois, Kentucky and the District of Columbia, directors are given the sole and entire right to make by-laws.

[6] Angel & Ames on Corp., § 327; Kyd on Corp., § 98.

Provisions giving the directors power to make or amend by-laws, save under careful restrictions, are of doubtful wisdom. The whole procedure is an innovation, altering completely the original plan of corporate organization under which the by-laws passed by the stockholders were designed for the express government, regulation and restraint of directors and officers. While the change may be advantageous or even necessary for the larger modern corporations, it is not, as a rule, a change to the advantage of the stockholders and is but rarely, if ever, advisable for the smaller corporations.

The power to make by-laws, whether vested in stockholders or directors, should be used with discretion. They are the working rules of the company and, if carelessly drawn, they may, on the one hand, seriously impede necessary business operations, or, on the other hand, fail to restrain reckless or improvident action of directors and officers.

By-laws are usually adopted at the first meeting of the stockholders or of the directors as the case may be, and other by-laws are added as the necessity arises. They should be carefully drawn, formally adopted and accurately recorded. By-laws are usually prepared in the first place by the counsel of the company and are presented to the first meeting of the stockholders, are read and passed upon section by section, and are then adopted as a whole, any needed changes being made as the reading progresses. Frequently, however, the reading is dispensed with, the by-laws being presented and adopted as a whole. The wisdom of this is more than doubtful, not only because every interested party should be familiar with the by-law provisions, but because the omission of the reading gives an opportunity—occasionally taken advantage of by unscrupulous parties—to insert provisions in the by-laws which are adverse to the interests of the

corporation, but which are not discovered until after adoption, when repeal is difficult or perhaps impossible.

§ 20. Arrangement of By-Laws.

By-laws should be so grouped that those relating to any matter may be readily found. A good arrangement is as follows: (I) Stock. (II) Stockholders. (III) Directors. (IV) Officers. (V) Dividends and Finance. (VI) Sundry Provisions. This arrangement is that adopted by Boisoit in his very excellent work on by-laws, is logical and convenient, and is followed in the present volume.

§ 21. Usual Provisions.

The usual provisions of the by-laws relate to the ordinary conduct of the corporate affairs and provide in detail for the issuance and transfer of stock, for meetings of stockholders and directors, for elections of directors and officers; prescribe the powers and duties of directors and officers; provide for the general care and management of the property and finances of the corporation and for the other details of corporate procedure.

Provisions which may or must appear in the by-laws are in many states prescribed by statute. Some of these are privileges or regulations which would otherwise be beyond the power of the corporation. Others merely reiterate provisions which the corporation would have full power to include without statutory permission. In any case, the recital of optional or prescribed by-law provisions in the statutes does not prevent the inclusion of any other proper regulations in the by-laws that may be desired.

In each state many matters directly relating to corporate procedure, such as notice of meetings, method of electing directors, etc., etc., are regulated by statute. It

is well to have the substance of these laws embodied in the by-laws, as they are then more accessible and are much less likely to be overlooked and disregarded than if their observance depended solely upon the secretary's knowledge of statute law. This is also true of the similar provisions occuring in the charter of the company, which should always be incorporated in the by-laws.

§ 22. Occasional Provisions.

Certain routine matters are provided for in every set of by-laws as a matter of course. In addition, any other matters desired by the stockholders, or directors, if directors are empowered to make by-laws, may be introduced if not in conflict with the law of the state or with the provisions of the company's charter. This gives wide opportunity for the introduction of provisions to meet special conditions, particularly where special provisions are not permitted in the charter. Thus the by-laws will sometimes prescribe a maximum limit for salaries, or will impose a debt limit upon the corporation, or will give some one officer unusual powers, or, where permissible, will provide for cumulative voting or for classification of stock, each class electing some specified proportion of the directors, etc., etc.

The number of these occasional or special provisions that may be brought in the by-laws is practically unlimited, and they are legally effective so long as they do not transcend the limitations imposed by equity, or by the constitutional, statute or common law and the charter of the corporation.

§ 23. Amendment of By-Laws.

Procedure for their repeal or amendment is usually prescribed in the by-laws. When not otherwise provided

by the statutes, the charter or the by-laws themselves, they may always be amended by the vote of a majority of the stockholders at any regular meeting, or at any special meeting duly called for that purpose. Directors have no power to alter, amend or repeal by-laws passed by the stockholders, save when the power is in some way expressly given them.

Under the usual by-law provisions for amendments, a majority of the outstanding stock constitutes a quorum, and a majority of this quorum may at any duly constituted meeting amend the by-laws, It is obvious that the actual amendment under these provisions may be effected by a comparatively small proportion of the outstanding stock. Thus, if there are two hundred shares outstanding and one hundred and one shares are represented at a meeting, such meeting is duly constituted, and fifty-one shares, or but little over twenty-five per cent. of the entire outstanding stock, may then amend the by-laws. Where greater stability is desired—generally in protection of minority interests—a special provision is frequently incorporated in the by-laws requiring that a majority of the entire stock or perhaps two-thirds in interest, or even a larger proportion, must vote in favor of any amendment to secure its adoption.

Such provisions are entirely legitimate but to be effective must usually be incorporated in the charter. In some states the statutes support such by-law provisions, even prescribing the majority necessary to amend or repeal by-laws, but otherwise they are of little avail. A majority of the stockholders at any duly constituted meeting have the common law right to amend and repeal by-laws, and this right cannot be taken from them by mere unsupported by-law inhibition.[7]

A restriction on this general right to amend by-laws

[7] Smith v. Nelson, 18 Vt. 511 (1846).

is occasionally imposed by the doctrine of vested rights. "A private corporation cannot repeal a by-law so as to impair rights which have been given and become vested by virtue of the by-law; and this although the power is reserved by its charter to alter, amend or repeal its by-laws."[8] Restrictions of this nature have already been referred to in § 17 of the present chapter.

It is to be noted that in Pennsylvania it has been decided that the by-laws cannot be amended in any important particular, such as an increase of directors, at an annual meeting unless the notices of that meeting informed all the stockholders that such action was contemplated.[9] This doctrine is unusual and does not obtain in a majority of the states.[10]

If by-laws are to be amended, it is desirable that the call and notice for such meeting, as well as the resolution by which the change is made, should set forth both the existing by-law and the proposed amendment. (See Ch. XXIX, "Forms for Notices of Meetings.")

§ 24. Observance of By-Laws.

As a rule, the requirements of the by-laws should be strictly and formally observed. Every stockholder, and, in many cases, every creditor of a corporation, has the right to demand that its operations be conducted in accordance with the laws of the state and with the provisions of the charter and by-laws of the corporation. Hence any irregularities may lead to legal interference and in some cases to the personal liability of the offending officer or director.[11] For instance, failure to give due

[8] Kent v. Quicksilver Mining Co., 78 N. Y. 159 (1879).
[9] Bagley v. Reno, etc. 201 Pa. St. 78 (1902).
[10] Chicago, etc. Ry. v. Union Pac. Ry., 47 Fed. Rep. 15 (1891); Warner v Mower, 11 Vt. 385 (1839).
[11] Briggs v. Spaulding, 141 U. S. 132 (1890); Bloom v. Nat. Sav. & Loan Co., 152 N. Y. 114 (1897); Williams v. McKay, 46 N. J. Eq. 25 (1889); Cit. Bldg. Assn. v. Coriell, 34 N. J. Eq. 383 (1881); Stockholders of Shelby R. R. Co. v. L. C. & L. R. R. Co., 12 Bush (Ky.) 62 (1876); see also note 16, § 25, post.

notice of a special meeting of the stockholders may later cause the entire proceedings to be declared invalid.[12] Or an officer acting in excess of the authority conferred upon him by the by-laws may render himself personally liable for any resulting loss.[13]

When, however, a corporation is prosperous and free from debt, and there are no objecting stockholders, and the officers possess the entire confidence of stockholders and directors, such accurate and formal compliance with all the by-law requirements is not so essential. Under such circumstances the formal regulations of the by-laws may be waived at convenience and the corporation conducted with the same simplicity and informality as a partnership.[14] It must be emphasized, however, that this is irregular and never safe unless acquiesced in by every interested party.

If a stockholder objects to violations or disregard of the by-laws, his objection must be promptly voiced or otherwise he will be deemed to have acquiesced and be estopped from subsequent interference. He must also be prepared to follow up his objection with proof that the irregularities have been committed. The law presumes that all proceedings have been regular and he who charges irregularity must do so without delay and must thereafter prove his allegation.[15]

§ 25. Enforcement of By-Laws.

The most potent factor in securing the observance of by-laws is found in the legal liabilities and entanglements that may result from violation. As already stated, corporate action taken in disregard of by-law requirements is

[12] Bagley v. Reno Oil Co., 201 Pa. St. 78 (1902); Tuttle v. Michigan A. L. R. R. Co., 35 Mich. 247 (1877); Jones v. Railroad, 67 N. H. 234 (1892).
[13] Van Dyck v. McQuade, 86 N. Y. 38 (1881); Scott v. Eagle Fire Co., 7 Paige (N. Y.) 198 (1838).
[14] Little v. Garabrant, 90 Hun (N. Y.) 404 (1895); Aff'd, 153 N. Y. 661 (1897).
[15] Sargent v. Webster, 13 Metcalf (Mass.) 497 (1847); Heintzelman v. Druids, etc. Assoc., 38 Minn. 138 (1888).

frequently illegal and liable to be restrained or set aside at the suit of any stockholder or creditor. Also the directors and officers guilty of such irregularities may render themselves personally liable for damages.[16]

Direct penalties for violation of by-law provisions are unsatisfactory and very difficult of enforcement,[17] and the considerations mentioned are generally relied upon to secure observance of the by-laws in all important matters. The smaller omissions and negligences on the part of directors and officials are usually passed over and disregarded, or their recurrence prevented by the election of more careful officials.

Cases may arise where penalties for violation of the by-law provisions may be profitably employed. Where the power of removal is given by the by-laws or statutes, disregard of the by-laws by officials of the corporation would undoubtedly be proper grounds for its exercise. Where such express power is not given, official disregard of the by-laws, when wilful, would probably be sufficient reason for removal under the common law.

In a number of states the statutes expressly permit the imposition of penalties for any breach of by-law provisions. These penalties uniformly take the form of fines. Thus in New Jersey, Wisconsin, Maine, Michigan, Pennsylvania, New Mexico, North Carolina and Rhode Island a penalty of twenty dollars may be imposed; in Florida a penalty of twenty-five dollars, while in California, North Dakota, South Dakota, Oklahoma and the Philippines, the penalty may be one hundred dollars. Where the statutes authorize such penalties, they may be enforced by action at law or by charging the amount against the offender and deducting it from any dividends or salary thereafter due him.

[16] Matthews et al v. Assoc. Press, etc., 136 N. Y. 333 (1893); Williams v. McKay, 46 N. J. Eq. 25 (1889); Cit. Bldg. Assn. v. Coriell, 34 N. J. Eq. 383 (1881); see also note 11, § 24, ante.

[17] Monroe Dairy Assn. v. Webb, 40 App. Div. (N. Y.) 49 (1899); Thomas v. M. M. P. Union, 121 N. Y. 45 (1890).

It should be noted that no stock corporation has the right to expel a stockholder, or deprive him under any circumstances of his rights of membership in the corporation. Such penalties, if imposed, could not be enforced.[18] In a membership or non-stock corporation the rule is different.[19]

§ 26. Record of By-Laws.

As by-laws are adopted, it is the duty of the secretary to properly record them. The usual and preferable method is to enter them in the minute book immediately following the charter. Space may be left between the different articles of the by-laws for the insertion of any new sections, and sufficient space be left between the sections for the insertion of any annotations or amendments.

When by-laws are repealed, they are preferably crossed out with red ink, the date and any material circumstances of their repeal being endorsed on the margin. Amendments are entered in the same way, the portion of the by-law amended being ruled out and the amendment interpolated. New sections may be entered in the same style as the original sections, the date of adoption being noted, but are sometimes entered in red ink.

In some few states, viz., North and South Dakota, Idaho, Nevada, Montana and California, the by-laws must be entered in a "Book of By-laws," and, save as to Nevada, must be properly certified by the officers of the corporation before they are legally effective. A still more formal certification and filing is required in the Philippines.

[18] See 2 Cook on Corp., § 710.

[19] Thomas v. M. M. P. Union, 121 N. Y. 45 (1890); Otto v. Tailors P. & B. Union, 75 Cal. 308 (1888); People ex rel Johnson v. N. Y. Produce Ex., 149 N. Y. 401 (1896).

PART II.—STOCK.

CHAPTER IV.
THE STOCK SYSTEM.

§ 27. Capital Stock.

The capital stock or capitalization of a corporation is the maximum amount of stock which it may issue under the provisions of its charter. This capitalization is fixed in the first place by the incorporators. Varying conditions influence its amount. Sometimes the incorporators decide that a certain capital is necessary for the operations of the company, and use this as a basis for determining its capital stock. Or it may be estimated that the enterprise will pay adequate dividends on a certain amount, and the capitalization be reached in this way. The organization tax imposed by the state sometimes influences its amount. Many other considerations may enter in and the determination of the most advantageous capitalization is frequently one of much difficulty.[1] Whatever the amount decided upon, it is stated in and made part of the charter application, and, if this application is allowed, the corporation comes into being with full authority to issue stock up too, but not above, the amount so fixed by its charter.

§ 28. Shares of Stock.

For the sake of accuracy and convenience in repre-

[1] A fuller discussion of this subject will be found in Conyngton on Corporate Organization, Ch. VI.

senting the interests of the various stockholders of the corporation, its capital stock is divided into shares. These are almost invariably of equal value and together make up the whole capitalization. Each of these shares ordinarily represents not only a unit of value, but also a unit of voting right, of interest in the profits when dividends are declared and of interest in the net assets when the corporation is liquidated. Those who invest the money or property with which the corporation does business, receive these shares in return for and as the evidence of their investment. Those who hold shares are termed stockholders or shareholders, and the interest of each is measured by the number of shares he holds.

The "face" or "par" value of shares of stock is their nominal value, as distinguished from their actual or selling value. This par value is usually decided upon in the first place by the incorporators and is then included in and fixed by the charter. In some few states this value is restricted by statute within certain limits, as in New York where shares may not be less than $5 nor more than $100; Minnesota where they may not be less than $1 nor more than $100, or New Hampshire where the minimum face value is $25 and the maximum $500. The usual and most convenient par value of shares is $100. They are rarely of greater par value but are frequently less. Ten dollar shares are some times issued, and one dollar shares are common, particularly in mining corporations. (See § 5.)

§ 29. Kinds of Stock.

Unissued Stock. Before issue, the stock of a corporation is said to be unissued. As a corporation is empowered to issue stock up to the full amount authorized by its charter, but is not compelled to issue more of this than is actually necessary for its operations, it very frequently

happens that part of its stock is issued while part remains unissued. Stock once issued cannot again become unissued stock, even though it comes back into the possession of the corporation.

Unissued stock, no matter whether it be the whole capital stock or only a portion thereof reserved, represents nothing whatever beyond the potential right of issue. It has no intrinsic value. It is in itself a nullity. It is merely the right—granted by the state—to issue stock up to the prescribed amount. It is not an asset of the corporation any more than an unissued promissory note is an asset of an individual or firm.[2]

Unissued stock is at times somewhat vaguely designated as "treasury stock." This term is better reserved for stock of the corporation which has been issued but has afterwards returned by donation, purchase, or otherwise. to the treasury of the company.

Issued Stock. Issued stock is that which has, by duly accepted subscription, or by payment in cash, property or services, or other values, passed from the company to others. (See § 32.) Stock which has been issued and is in the hands of stockholders is said to be "issued and outstanding.

For bookkeeping purposes, issued stock is regarded as a liability of the company, and the cash or property or other values received therefor should be an equivalent asset.

Full-paid Stock. When the corporation issues stock and receives in exchange therefor not less than its full face or par value in money or property or other valuable considerations, without fraud and in good faith, such stock is "full-paid." If issued for less than its full face value or if payment in full has not yet been received. the stock is not full-paid stock, and the holder of such stock is liable to the

[2] Brewster v. Hartley, 37 Cal. 15 (1869).

corporation or its creditors for the difference between the amount actually paid on the stock and its par value. (See §§ 48, 73, 74.)

The holders of full-paid stock are not liable to creditors of the company in case of insolvency,[3] nor, save in a few states, subject to assessment on their stock.

Common Stock. The general or ordinary stock of the company, with neither special privileges nor restrictions, is termed "common stock." Unless preferred or other special stock is issued by the company, all its stock is com mon stock.

Preferred Stock. Stock which by proper statutory procedure has been given special rights as to dividends or assets or some other privilege not enjoyed by the remaining stock of the same corporation, is termed "preferred stock."[4] (See Form 18.)

Subject to any statutory regulations, the privileges of preferred stock are purely a matter of agreement among the incorporators, or, if created later, among the stockholders of the corporation. Preferred stock is therefore issued in many different forms. Thus different classes of preferred stock may be created, the first receiving its dividends before the second and the second before the third. and so on, all of the preferred stocks receiving their dividends in any year before the common stock may receive any dividend at all. Also these different classes may receive dividends at different rates, the first receiving perhaps five per cent., the second six per cent., and the third seven per cent. Or sometimes the amount of a preferred dividend will be made contingent upon the amount of corporate profits earned, or the corporate income from particular sources may be designated for payment of preferred dividends. Or again it is sometimes provided that

[3] Sprague v. Nat. Bk. of America, 172 Ill. 149 (1898); Coleman v. Howe, 154 Ill. 458 (1895); Berry v. Rood et al, 168 Mo. 316 (1902).
[4] Boardman v. Lake Shore & Mich. So. Ry. Co., 84 N. Y. 157 (1881).

the preferred dividends shall first be paid and the preferred stock then participate equally with the common stock of the company in all further dividends for that year. Or the dividends on preferred stock may be made cumulative, in which case the stock has a continuing claim against the profits of the corporation for its preferred dividends or any portion thereof not paid in any particular year. Such deferred dividends accumulate from year to year and must be settled in full before any dividend may be paid the common stock.

Preferred stock votes as does common stock unless the privilege is expressly denied. Preferred stock may or may not have preference in the final distribution of assets, according to the terms of the provisions by which it is created. It may be stated generally that preferred stock has every right enjoyed by common stock unless otherwise expressly provided.

Guaranteed Stock. When dividends on the stock of one corporation are guaranteed by another corporation, the stock is said to be guaranteed. The arrangement is common among railroad companies and is occasionally entered into by individual corporations. The term is also sometimes applied to preferred stock when its dividends are cumulative.[5]

Treasury Stock. Unissued stock is frequently but loosely designated "treasury stock." As already stated, the term is better reserved for stock that has once been issued and has come back into the possession of the company. Such stock is not cancelled but is held subject to issue, usually at the discretion of the board of directors.

Treasury stock is regarded as an asset of the company and may be sold by the board of directors as any other property may be sold. If it was "full-paid" before

[5] Green Bay, etc. R. R. Co. v. Union, etc. Co., 107 U. S. 98 (1882); Marbury v. Kentucky Union Land Co., 62 Fed. Rep. 335 (1894); Boardman v. Lake Sh. & M. S. Ry. Co., 84 N. Y. 157 (1881).

it returned to the company, it retains that character and may be sold below par without on that account involving the purchaser in any liability. (See §§ 48, 74.)

While the company holds treasury stock, such stock is inert and can neither be voted nor participate in dividends.[6] Such stock is not, however, cancelled but is held subject to such sale or other disposition as the directors may determine upon, and is therefore still "issued" though not "outstanding."[7] Its character as full-paid stock and as issued stock has not been changed by its acquisition by the corporation.

Watered Stock. Stock issued as full-paid when the corporation has received no equivalent therefor or but a portion of its par value, is commonly termed "watered" stock.[8] Watered stock may be created by the issue of stock as a stock dividend without sufficient increase of the corporate property to support it, or by its issuance as a bonus with preferred stock or bonds, or, as is the method in the great majority of cases, by its issuance for property or services at an overvaluation. In many states such issues of "fictitiously paid-up" stock are prohibited.

The issuance of watered stock is usually objectionable. It not only creates a fictitious obligation of the company which may lead to failure and insolvency, but it also creates a presumption of values which do not exist, and which is not uncommonly carried so far as to become a fraud upon the investing public.

§ 30. Subscriptions to Stock.

Subscriptions to stock are made both before and after organization of the corporation. A subscription before organization is in the nature of a continuing proposition

[6] Farwell v. Copper Works, 8 Fed. Rep. 66 (1881); Brewster v. Hartley, 37 Cal. 15 (1869); O'Connor v. Int. Silver Co., 68 N. J. Eq. 680 (1905).
[7] Knickerbocker, etc. Co. v. State Board of Assessors, 62 Atl. Rep. (N. J.) 266 (1906); Reversed, 74 N. J. L. 583 (1907); Pabst v. Goodrich, 133 Wis. 43 (1907).
[8] Cook on Corp., Ch. III.; 2 Clark & Marshall on Corp., §§ 389-401 inclusive; Conyngton on Corp. Organization, §§ 60, 61.

from the subscriber to a non-existent corporation, and in its usual form (See Ch. XXII, "Subscription Lists and Receipts") is revocable by the subscriber at any time prior to the organization of the corporation. In some states the mere organization of the corporation is held to make the subscription binding on the subscriber.[9] In other states it is not held to be binding until the corporation is organized and has accepted the subscription.[10] (See § 58.)

A subscription after organization is binding on the subscriber as soon as accepted,[11] and the corporation may usually accept or reject such a subscription at its option. If, however, it has opened subscription books, or has sent out subscription blanks, or has in some other way made a continuing offer, any person subscribing thereunder is held to accept the offer of the corporation and the contract is complete as soon as the subscription is made and both parties are then bound.[12] (See Forms 5, 6.)

An unconditional subscription once legally effective, constitutes the subscriber a stockholder of the corporation and his subscription cannot be withdrawn, cancelled, released or rejected unless with the consent of all the other subscribers or stockholders and creditors of the corporation. The directors have no discretion in the matter.[13] If, however, a subscriber becomes insolvent, or his ability to pay is doubtful, the directors may effect any fair compromise if made in good faith.[14] Also the corporation may, when a subscription is partly paid, agree to recognize the payment, if sufficient, as in full for a portion of the stock. This portion then becomes full-paid and the liability of unpaid stock attaches only to the balance.[15] The

[9] Hudson R. E. Co. v. Tower, 156 Mass. 82 (1892); Muncy, etc. Co. v. De La Green, 143 Pa. St. 269 (1888).
[10] Yonkers Gaz. Co. v. Taylor, 30 App. Div. 334 (1898); Buffalo, etc. R. R. v. Gifford, 87 N. Y. 294 (1882); Athol, etc. Co. v. Carey, 116 Mass. 471 (1875).
[11] Doherty v. Ark. & O. R. Co., 142 Fed. Rep. 104 (1905).
[12] Greer v. Chartiers Ry., 96 Pa. St. 391 (1880); Spear v. Crawford, 14 Wend. 20 (1835).
[13] Winston v. Dorsett, etc. Co., 129 Ill. 64 (1889).
[14] 10 Cyc., p. 459.
[15] 1 Cook on Corp., § 168.

fact that the corporation has become insolvent, or is unsuccessful, is no defense against payment of a duly made subscription. Material misrepresentations are, however, a good defense as are also any material changes in the conditions set out in the subscription agreement.

In New York and a few other states the statutes provide that subscriptions after organization shall not be accepted unless accompanied by payment of a prescribed percentage. Under such conditions, a subscription is absolutely ineffective until such payment has been made and prior thereto may be withdrawn at the will of the maker. (See Ch. IX, "Liabilities of Stockholders")

§ 31. Certificates of Stock.

Every stockholder whose stock has been *paid in full*, is entitled to a certificate or certificates, signed by designated officers and usually bearing the corporate seal, showing the number of full-paid shares of stock owned by him.[16] In a number of states the issuance of certificates when stock is full-paid is prescribed by statute. In all cases it is advisable that the by-laws should provide specifically for the issuance of stock certificates and the manner of their execution.

The certificate of stock is merely a convenient evidence of the ownership of corporate shares. It occupies much the same relation to stock that the deed does to land. A stockholder can vote, receive dividends, hold office and enjoy all the rights of a stockholder before he receives the certificate or after he has lost it.[17] He is also liable as a stockholder without regard to whether or no he has received his certificate.[18] The certificate does not make him

[16] National Bank v. Watsontown Bank, 105 U. S. 217 (1881); Birmingham National Bank v. Roden, 97 Ala. 404 (1892).
[17] Wheeler v. Millar, 90 N. Y. 353 (1882); National Bank v. Watsontown Bank, 105 U. S. 217 (1881); Brigham v. Mead, 92 Mass. 245 (1865).
[18] Mitchell v. Beckman, 64 Cal. 117 (1883).

a stockholder, but he is entitled to a certificate because he is a stockholder. (See §§ 32, 33, 38, 41, 58.)

In many states the statutes prohibit the issuance of a stock certificate before payment for the stock has been received by the corporation. Elsewhere the charter or by-laws should contain a similar prohibition. The object in reserving the certificate until payment has been made is to prevent the transfer of the unpaid stock with the possible resulting complications in the collection of the amounts still due. (See § 48.)

If a stockholder has paid in part for his stock, he is entitled to a receipt evidencing such payment but not ordinarily to a stock certificate. If, however, the by-laws so provide, or if the corporation has made a practice of issuing certificates for partly paid stock with the amount of payments endorsed thereon, he may demand such certificate as soon as his first instalment is paid.[19]

Whenever a duly assigned certificate of stock is surrendered to the corporation, a new certificate or certificates must be issued to the holder if so demanded. (See § 44.) If the right is likely to be abused, a small fee may be charged for each transfer.[20] (See §§ 34, 38; also Ch. XXIII, "Forms of Stock Certificates.")

§ 32. Issuance and Transfer of Stock.

When stock of a corporation is subscribed for and the subscriptions are accepted by the company, or when payment for stock is properly made in cash, property, labor, services or other values, the parties making such subscriptions or payments become stockholders of the company entitled to all the usual rights of stockholders.[21] Whether their stock is technically issued then, or at the time the

[19] Birmingham National Bank v. Roden, 97 Ala. 404 (1892); National Bank v. Watsontown Bank, 105 U. S. 217 (1881).
[20] Giesen v. L. & N. Mortgage Co., 102 Fed. Rep. 584 (1900).
[21] Wheeler v. Millar, 90 N. Y. 353 (1882); Nelson et al Ex'rs v. Owen, 113 Ala. 372 (1896); Buffalo & N. Y. City R. R. Co. v. Dudley, 14 N. Y. 336 (1856).

proper entries are made on the books of the corporation, is an open question. It is, however, definitely decided that the issue of stock is entirely independent of the issue of stock certificates. (See §§ 31, 33, 38, 41.)

When stock is originally issued it cannot be considered a transfer.[22] The certificates for such an issue are merely evidence of value received by the corporation, but there is no transfer of anything of value from the corporation to the individual. The issue itself is entered in any stock book or stock ledger kept by the company as an original issue but as it is not a transfer, is not entered on the transfer book.

The directors usually have power to determine when an issue of stock is necessary and to direct such issue.

Any holder of full-paid stock is free to transfer it at will. In the absence of statutory or corporate prohibition, stock may be likewise transferred before it is full-paid. This transfer is usually effected by the assignment of the stock certificates which represent the stock transferred, but if certificates are not issued, stock may still be transferred by due written assignment or by transfer on the books of the corporation. (See Ch. VI, "Issue and Transfer of Stock.")

[22] Burr v. Wilcox, 22 N. Y. 551 (1860).

CHAPTER V.

THE STOCK RECORDS.

§ 33. Transfer on Books of Corporation.

As a rule, the issue of stock is evidenced by the issue of stock certificates, and transfers of stock are effected by assignment of these certificates. The due possession of a properly issued stock certificate, or of such a stock certificate duly assigned, is therefore sufficient evidence of the ownership of stock for all ordinary business purposes.

For all corporate purposes, however, stock certificates are merely secondary evidence of stock ownership, the stock books of the corporation affording the highest evidence of title.[1] In many states this is a matter of statutory regulation; elsewhere of charter or by-law provision (See § 35), such statutory or corporate regulations ordinarily prescribing that transfers of stock shall be made only upon the stock books of the corporation and that "stockholders of record," i. e., those whose names appear upon the stock books of the corporation, are alone entitled to exercise the usual rights of stockholders.

Thus it will be seen that while the duly assigned stock certificate is good evidence of the ownership of stock, such ownership is not effective for corporate purposes until the transfer has been recorded upon the stock books of the corporation. The holder of such a certificate may force the proper entries upon the corporate books but he cannot

[1] Cleveland, etc. R. R. v. Robbins, 35 O. St. 483 (1880); Brisbane v. Del., etc. R. R., 94 N. Y. 204 (1883).

exercise the rights of a stockholder until such record has been made. (See § 38.)

A practical application of this rule is found in the usual provision that the transfer books of the corporation shall be closed a specified number of days before elections or dividend days. This absolutely prevents any change of ownership for corporate purposes during the closed period and avoids the confusion that would otherwise exist when preparing for payment of dividends, sending out notices of meetings and determining who is entitled to vote at elections. Stock may be sold without restriction during this closed period, transfers being evidenced by assigned certificates, but the record of these transfers on the corporate books cannot be effected until the stock books are again opened. (See § 37.)

If no stock certificates were issued, the interests of the stockholders of a corporation might still be assigned very simply, either by transfer on the books of the corporation by the parties in person in the presence of a corporate official, or by the execution of formal instruments of assignment so attested as to satisfy the corporate transfer officer of their validity.[2]

The books of the corporation used in connection with the issue and transfer of stock are the stock certificate book, the stock ledger and the stock transfer book.

§ 34. Stock Certificate Book.

The stock certificate book consists of blank stock certificates which, numbered and in serial order and each with its corresponding stub, are bound up in book form. When a certificate is to be issued its blanks are properly filled, and all the important data relating to its issue are entered on its stub. The certificate is then detached from the stub for delivery, leaving this latter in the stock certificate book

[2] Manchester Street Railway v. Williams, 71 N. H. 312 (1902); May v. McQuillan, 129 Mich. 392 (1902).

as the secretary's memorandum of the issued certificate. The board of directors have power to prescribe the form of stock certificates and to direct their issue. (See Ch. XXIII, "Forms of Stock Certificates.")

The stock certificate book is usually prepared at the time the company is organized or sometimes even before, so that certificates may be issued as soon as the corporate officials have been authorized thereto. In this case the form of stock certificate is approved and the issue of certificates authorized at the first meeting of the board. On the other hand, the issue of permanent certificates is sometimes deferred for a considerable period on account of the time required for their preparation, or to temporarily save expense, or for some other reason. Under such circumstances, temporary receipts or certificates (See Forms 10, 11) are issued, exchangeable for the permanent certificates as soon as these latter are ready for delivery.

When an issue of stock is directed, the secretary fills out and seals in numerical order the proper certificates. At the same time he enters on the stub of each certificate the name of the party to whom it is to be issued, the number of shares represented by the certificate, the date of issue and, if it is an original issue, that fact is noted on the stub; if a reissue, the number of the certificate surrendered is entered. The stub also usually includes a receipt to be signed by the party to whom the certificate is issued and a blank in which, when the certificate is surrendered for cancellation and reissue, is entered the number of the certificate issued in its stead. The stub when filled out thus contains a complete record of its particular certificate.

When stock is to be transferred, a new certificate should never be issued until the old certificate, properly endorsed, has been surrendered. This surrendered certificate should, as soon as received, be cancelled by cutting, punching or crossing out the signatures and by writing or

stamping across the certificate the word "Cancelled." This is done to prevent the certificate from being reissued or from being used for fraudulent purposes in case it were stolen or came otherwise into the hands of improper parties. After cancellation the certificate is gummed to the stub from which it was originally taken, the proper entries are made upon the stub (See Form 13) and, as far as the particular certificate is concerned, the matter is closed. A surrendered certificate should never be reissued or again put in circulation under any circumstances.

Every precaution should be taken to avoid mistakes in issuing certificates. The entries on the stub should be made before the certificate is separated from it. Certificates with space for the name left blank to be filled in later, should never be issued. Such a practice prevents absolutely the accurate record of the stockholders of the corporation, which is legally essential. A corporation is responsible for any fraud or error committed by its agents in the issuance of stock.[3]

The secretary usually has charge of the stock certificate book and prepares the certificates for issue. Where the secretary receives no regular salary or in cases where there are numerous small transfers of stock, he is sometimes authorized by the by-laws or by resolution of the board of directors to charge a small fee for transfers—usually varying from ten to twenty-five cents for each certificate issued. This is occasionally a very convenient regulation, compensating the secretary for the time and labor involved in the issue of new certificates and also tending to restrain unnecessary transfers.[4]

In the smaller corporations the stock certificate book is frequently the only "stock book" maintained. This practice is informal and does not keep the record of stockholders in convenient shape for reference, but—in the ab-

[3] N. Y. & N. H. R. R. Co. v. Schuyler, 34 N. Y. 30 (1865).
[4] Giesen v. London, etc. Mortgage Co., 102 Fed. Rep. 584 (1900).

sence of statutes requiring other stock books to be kept—is not legally objectionable. The stock certificate book then affords the sole record of those who are stockholders and entitled to vote and receive dividends.[5] (See § 36.)

§ 35. Stock Ledger and Stock Book.

In almost every state in the Union some form of stock record is prescribed by statute, variously termed a "stock book," "stock ledger," "transfer book" or "stock and transfer book." In some states, both "stock books" and "transfer books" are required. The intent in all these states is to preserve an accurate record of the stockholders and the stock held by them.

The stock ledger and the stock book are practically and should be one and the same book, ordinarily kept under the title "stock ledger" or such other title as may be prescribed by the statutes. This stock ledger must show in alphabetical order the names and addresses of the stockholders of record, the amount of stock held and from whom and when this stock was acquired, and, if any of their stock has been disposed of, to whom and when it was transferred. It must also show the balance of stock at any time to the credit of any stockholder. This balance gives the number of shares upon which such stockholder is entitled to vote and draw dividends. (See Forms 192, 193.)

In some states additional data must be entered. Thus, in New York the amount received by the corporation on any stock acquired by a stockholder must be recorded; in California and Texas the corporate assets and liabilities and addresses of corporate officers must be included; in North and South Dakota instalments paid and unpaid, and any assessments levied and paid or unpaid must be recorded; in Alaska all pledges must be shown by the stock

[5] Chemical Nat. Bank v. Colwell, 132 N. Y. 250 (1892); Plumb v. Bank of Enterprise, 48 Kan. 484 (1892); American Nat. Bank v. Oriental Mills, 17 R. I. 551 (1891); *In re* U. S., etc. Co., 74 N. J. L. 315 (1907).

book, and in Vermont the articles of association must appear therein.

The statutes in many states are very peremptory in regard to the keeping of stock books, providing severe penalties for failure. Thus in New York the statutes not only prescribe heavy penalties for failure to keep stock books but provide that no transfer of stock shall be valid as against the corporation, its stockholders and creditors—save to render the transferee subject to liability as a stockholder—until the record thereof has been duly entered in the stock book.[6]

In most of the states the stock book must be kept open for inspection of stockholders or creditors of the corporation, and the provisions relating to the stock books apply both to domestic corporations and also to foreign corporations doing business in the particular state.

The stock ledger is usually posted from the transfer book and its balances may be checked from time to time by comparison with the number of shares outstanding as shown by the open stubs of the stock certificate book. (See Forms 16, 17, 192, 193.)

§ 36. Transfer Book.

The transfer book contains not only a record of transfers of stock of the particular corporation but also the actual instruments of assignment by which these transfers were effected. It is the book referred to by the usual form of stock certificate in the clause reading "transferable only on the books of the company, etc." (See Form 16.) In some of the states a transfer book is a statutory requirement.

The transfer book is found in two general forms. As usually kept by the smaller corporations (See Form 190) it consists of a series of blank transfers or assignments

[6] N. Y. Stock Corp. Law, § 29; Penal Code, § 611.

bound in book form. These are filled out and signed by the owner of stock or his duly authorized attorney when the actual transfer of stock disposed of by him is made upon the books of the company. They are primarily designed to be formal evidence of the transfer of stock. They are also the secretary's authority for the issuance of new certificates of stock to the assignee in place of the old certificates surrendered.

The second form of transfer book (See Form 191) is used by the larger corporations where the number of transfers is too great to permit of the convenient use of the form already described. But one line is required for each transfer of stock, the transferee or his duly authorized attorney signing in the right-hand column.

By reference to the assignment on the back of the stock certificate (See Forms 19 and 20), it will be seen that the assignment of the transfer book is practically a duplication of that on the back of the stock certificate, save that the power of attorney to transfer the stock on the books of the corporation is omitted from the transfer book. As the duly executed assignment on the back of a surrendered stock certificate is a full and sufficient transfer of the actual ownership of the stock and justifies the secretary in issuing another certificate in the name of the assignee, many of the smaller corporations never keep a stock transfer book, relying entirely upon the stock certificate book with its stubs and duly assigned and cancelled certificates for the record and evidence of authorization of transfers. (See § 34.)

When the transfer book is used, its assignment forms are signed either by the party making the transfer or by his duly authorized agent. Should the transferrer come in person—as he has the right to do—and sign a transfer on the stock transfer book, there is no legal necessity for his signature to the assignment on the back of the stock certificate. It is, however, always customary for him to execute the assignment on the back of the surrendered stock certificate as well.

It is but seldom that the transferrer makes the transfer on the books of the corporation in person. In perhaps ninety-nine cases out of a hundred he merely signs in blank the assignment on the back of the certificate and turns it over to the purchaser. The name of the attorney to make the transfer is then inserted at the time the certificate is presented for transfer, either by the party by whom the certificate is surrendered or by the secretary of the company who, as a matter of convenience, usually inserts his own name. The attorney so designated signs the transfer on the transfer book. (See § 38.)

§ 37. Closing the Books.

In all the larger corporations it is customary to close the stock books to transfers prior both to elections of directors and the payment of dividends,[7] for a period of from two to forty days. This is done to enable the corporate officers to make an accurate list of those entitled to receive notice of meetings and to vote thereat or to receive dividends. (See § 33.)

In a number of states the statutes expressly authorize the stock books to be so closed to transfers. Where this is not the case, it may be provided for in the charter or by-laws. The precise number of days for which the transfer books are closed is usually fixed by the by-laws. The resolution declaring dividends usually fixes the number of days for which the books shall be closed before the dividend day, if this is not prescribed by the by-laws.

In some cases the statutes or by-laws merely provide that stock shall be voted by the owner of record, as shown by the books of the company, ten, twenty, thirty or forty

[7] Jones v. Terre Haute, etc. R. R. Co., 57 N. Y. 196 (1874).

days before an election. This wording does not justify closing the stock books and refusing to make transfers. In such case transfers are made without interruption but the secretary, in making up his lists of stockholders for the election, ignores transfers made after the fixed date.

No formality attends the closing of the stock books and usually no entry thereof is made upon the books, the secretary merely refusing to transfer certificates presented to him for that purpose during the prescribed period. The notice of the annual meeting or of dividends usually sets forth the days for the closing and reopening of the transfer books.

CHAPTER VI.

TRANSFER OF STOCK.

§ 38. Procedure of Transfer.

When stock is to be transferred, one of the following courses is ordinarily pursued: (1) The certificate is assigned in blank (See Form 19) and delivered to the transferee, in which case the assignment is absolute[1] and the certificate may then be passed from hand to hand and the ownership of the stock it represents be thereby transferred any desired number of times without change of or addition to the assignment. (2) The assignment on the back of the certificate is completed by the insertion of the name of the transferee (See Form 20), in which case the certificate must be surrendered and a new certificate taken out by the transferee before it can be again transferred. (3) The assignor completes the assignment form on the back of the certificate, surrenders the certificate to the secretary of the company, and secures and makes delivery of a new certificate in the name of the transferee.

When transfer is made by delivery of the certificate with the name of the transferee inserted in the assignment, the transfer is not made on the books of the corporation until the assigned certificate is surrendered. In the meantime the original owner is still the owner of record (See § 33) and will therefore be held should any stockholders' liabilities arise. (See § 48.) This objection, when the stock transferred is full-paid, is not in most

[1] Allen v. South Boston R. R., 150 Mass. 200 (1889); Leavitt v. Fisher, 4 Duer (N. Y.) 1 (1854); Fraser v. Charleston, 11 S. C. 486 (1878).

states material in the case of ordinary business corporations but when stock of banks, trust companies or other financial corporations is transferred. or when stock is not full-paid, may be material and even vital. (See § 73.)

When transfer is made by assignment in blank, the certificate so assigned is semi-negotiable and therefore its negotiation is comparatively easy in case the certificate is lost or stolen. (See § 41.) Also, as in the case of the completed assignment, the transfer on the books of the corporation is not made until the transferee surrenders the assigned certificate.

An objection to the assignment and surrender of the old certificate by the transferrer with issue to him of a new certificate in the name of the transferee is sometimes found in the fact that the proposed sale or other arrangement for the transfer of the stock may fail. The transferrer in such case naturally retains the new certificate but finds himself in the very awkward position of owning stock which stands on the books of the corporation in another's name.

In practice the assignment in blank, on account of its convenience, is employed in the great majority of stock transfers.

When the holder of a certificate assigned in blank wishes to perfect his title and make himself a holder of record, he fills in his own name as assignee and surrenders the certificate to the secretary or transfer agent for transfer. He may also, if he sees fit, fill in the name of the party who is to make the transfer upon the books of the corporation, though this is usually left blank. If the signature to the assignment is genuine and there are no reasons for suspecting any irregularity, the transfer is made as a matter of course and a new certificate is issued in the name of the assignee. If the name of the attorney to make the transfer is left blank in the assignment of the

surrendered certificate, the secretary of the corporation usually fills in his own name and then completes the transfer, thereby avoiding the delay that might result if some outside party were designated, who must come in and sign the transfer book before the transfer could be duly recorded.

When the assignment on the back of the certificate has been completed by the insertion of the assignee's name, the certificate is not readily negotiable and is almost invariably turned in and a new certificate taken out. If, however, conditions made it necessary for the assignee to transfer the certificate originally assigned to him, he might effect the transfer by means of a second assignment —in blank if desired—written on the back of the certificate, or written on a separate sheet and attached to the certificate.

As already stated, stock assigned by endorsement of the certificate, whether in blank or complete, still stands on the books of the corporation in the original owner's name until the certificate is surrendered and the proper entries are made on the stock books of the corporation. Until this is done the original owner is still the stockholder of record and, while subject to any stockholders' liabilities accruing meanwhile (See §§ 48, 73) has, on the other hand, a legal right to vote and to receive payment of any dividends declared even though the actual sale of his stock was consummated months before.[2] His right to vote is absolute, and after its exercise cannot in any way be overturned or questioned. His right to dividends is qualified, as the dividends belong to the actual owner of the stock, i. e. the person possessing the duly assigned stock certificate, to whom the holder of record must account. (See § 171.) His responsibility as to any stock-

[2] Brisbane v. Delaware, etc. R. R. Co., 94 N. Y. 204 (1883); Cleveland, etc. R. R. Co. v. Robbins, Admr., 35 O. St. 483 (1880); Bank of Commerce's Appeal, 73 Pa. St. 59 (1873); Robinson v. National Bank of New Berne, 95 N. Y. 637 (1884).

holders' liability is, as to the corporation, absolute, but he has recourse on his assignee for any payments he may be compelled to make on this account.

Before delivering the new certificate, the secretary should, when possible, require the party who presented the old certificate for transfer—who may or may not be the assignee—to sign a receipt therefor on the stub. If the new certificate is delivered by mail, it may be registered, in which case the stub in the stock certificate book, the office copy of the letter accompanying the certificate, and the returned registry receipt, which should be attached to the stub, make a sufficient record of the transaction. Blank receipts are sometimes sent with the certificates in such cases, to be signed by the recipient and returned, and these receipts when received by the secretary are pasted on the proper certificate stubs.

Frequently the owner of stock wishes to sell or transfer but a portion of the stock represented by a certificate, and in such case the assignment on the back of the certificate may be filled out according to the facts. For instance, if Howard Fielding owned one hundred shares of stock, all included in a single certificate, and wished to sell twenty shares to James Wilton, he might fill out the assignment as follows: "unto James Wilton twenty shares and Howard Fielding eighty shares," or if the secretary will accept the somewhat informal assignment, it might be merely filled out "unto James Wilton twenty shares," it following as a matter of course that if but twenty shares are assigned, the balance of the stock remains with the assignee.

The owner of the hundred shares then brings or sends in his certificate to the secretary and instructs him to make out two new certificates—the one for twenty shares in the name of the new owner, the other for eighty shares in his own name. The secretary makes the proper entries

on the stock book, cancels the old certificates, issues the two new certificates in accordance with his instructions, and delivers *both*, unless he has express instructions from the original owner to the contrary, *to this original owner*, who then makes delivery of the twenty-share certificate at his convenience. The secretary must be governed entirely by the instructions of the assignee in delivering new certificates, no matter in whose name these certificates may be issued, as they are still in fact the property of the original owner.

Another and usually preferable method when but a portion of the stock represented by a certificate is to be transferred, is for the original owner to have the new certificates issued to himself. When this is to be done, he fills in his own name as assignee, instructing the secretary to issue new certificates for the proper number of shares. In the case instanced he would have two certificates issued—one for twenty shares and the other for eighty shares—in his own name. He would then assign the twenty-share certificate in blank, or in the name of the new owner, and deliver it, if the transaction is concluded. The new owner may then bring in and surrender this assigned certificate and take out a new certificate in his own name at his convenience.

When this plan is followed, even should the sale fail after new certificates were issued, the original owner still has the stock standing on the books of the corporation in his own name and both certificates made out to him; whereas if the first plan had been followed, one of the certificates being made out to the proposed purchaser, part of his stock would stand on the books in the transferee's name, and the real owner must either secure the assignment of this other party as a matter of courtesy, or otherwise be put to much trouble to get the certificate back into his own name.

When a certificate is surrendered for reissue in one or more certificates in the original owner's name, the transfer may be entered on the transfer book as a matter of record, but as the owner's stock account is not affected one way or the other by the transaction, should not be posted therefrom to the stock book. A memorandum of the facts should be made in the transfer book and on the stubs of the certificates involved in the reissue and the certificate numbers in the stock book must be corrected.

When a certificate is lost and by due procedure the owner has secured an order from the board of directors for its reissue, the secretary's best plan is to treat the transaction just as he would if the owner brought in a certificate with a request for a reissue, save that he must of necessity omit the usual formality of the cancellation of the old certificate. The owner should be required to sign the transfer on the transfer book, his name being also entered as the transferee, and the facts of the case should be noted on the transfer book and on the stubs of the old and new certificates. The transfer is not, however, posted from the transfer book to the stock ledger, though the changed certificate numbers should be noted in this latter book.

The secretary or officers of the corporation may refuse a transfer or reissue of stock until the old certificate has been surrendered or until any other proper requirements have been complied with. When, however, this has been done, they must make the desired transfer or reissue.[3] The authenticity of the signature to an assignment of a stock certificate must be satisfactorily established when necessary. In the smaller corporations the secretary is usually familiar with the signatures of the stockholders. The larger corporations sometimes require the signatures to be witnessed or guaranteed by some person known to

[3] Jones v. Terre Haute, etc. R. R. Co., 57 N. Y. 196 (1874); Robinson v. National Bank of New Berne, 95 N. Y. 637 (1884).

the transfer agent, or otherwise that they shall be formally acknowledged before a notary public. (See §§ 44, 45, 57.) If there is any doubt as to the authenticity or correctness of the assignment or as to the title of the party presenting the certificate, or as to any other material matter, the secretary has the right to delay the transfer for a reasonable time in order to communicate with the former holder or take such other steps as he may deem expedient. If after due investigation, there still remains doubt as to the propriety of the transfer or the ownership of the certificate, or if there be conflicting claims, the secretary may properly decline to act until instructed by the board of directors, and the board, if in doubt, may decline to take action in the matter until ordered thereto by some court of competent jurisdiction. (See § 41.)

§ 39. Transfer of Treasury Stock.

When treasury stock is donated to or otherwise acquired by a corporation,[4] the assignment may run to the corporation direct, as "John Marshall Company," to its treasurer, as "Treasurer of John Marshall Company," or to a trustee, as "John H. McGowan, Trustee for John Marshall Company." The certificates so assigned are cancelled when received and the proper entries are made on the transfer book and stock ledger. When such stock is held in the name of the company or even by the treasurer of the company, no new certificates need be issued until the stock is sold, the fact that certificates are not issued being noted on the stock books. When a sale of such stock is made, the new certificates are made out direct to the purchaser. Certificates might properly be issued meanwhile in the name of the company or to the treasurer if desired, but such issue is unnecessary as the data of the transfer book, the entry on the stock ledger

[4] See Conyngton on Corp. Organization, Ch. X.

and the cancelled certificates are quite sufficient to evidence the transaction. It is obvious that the reasons that make the certificate desirable when stock is held by an individual, do not apply when a corporation holds its own stock.

When treasury stock is sold, the secretary is authorized by due resolution of the board of directors to issue the proper certificates. Such transfers are entered on the stock books of the corporation as in case of any other transfer of stock. If certificates are not issued for the stock while held by the corporation, this fact should be noted on the stock books.

§ 40. Transfer Agent and Registrar.

A transfer agent in the modern acceptation of the term, is one who supervises and certifies transfers of corporate stock. The extent of his supervision depends upon custom or upon the particular agreement.

A transfer agent usually keeps the stock certificate book in his custody. When a transfer is to be made, the certificate of stock duly assigned is surrendered to the transfer agent, who thereupon cancels the surrendered certificate, attaches it to its proper stub and issues a new certificate in the name of the transferee. This certificate is then sent to the proper corporate officials who affix their signatures and the corporate seal—unless the seal is also entrusted to the transfer agent—make the proper records in the transfer and stock books and return the signed, or signed and sealed certificate to the transfer agent. The transfer agent thereupon seals the certificate if not already sealed, endorses it in evidence of its due issue, delivers it to the transferee, and the transaction is closed.

Occasionally when a transfer agent is employed, the stock certificate book is retained in the custody of the

corporation. In such case when a certificate is presented for transfer, it is cancelled by the transfer agent and turned over to the corporation in exchange for a new certificate issued in the name of the transferee. This certificate is endorsed by the transfer agent and delivered to its owner. When the stock certificate book is kept by the corporation, the transfer agent keeps an independent record of stock certificates issued and surrendered, in order that the regularity of any particular transfer or issue may be readily and definitely ascertained.

A registrar is a corporate appointee who also supervises the transfer of corporate stock but does not usually carry his supervision to the same extent as does the transfer agent, his function being merely to register stock as issued. He maintains a record of all stock certificates issued and of the surrender and reissue of any new certificates with the names of the parties to the transfer. If an issue or transfer is to be made, the registrar passes upon the certificates and countersigns them if they are correctly issued.

It will be seen that the duties of the transfer agent and registrar are distinct, and should not be performed by a single person or institution. The function of the transfer agent is to ensure the proper issue of stock. The function of the registrar is to ensure the regularity of issue and to prevent overissues. The functions of the two somewhat overlap, as the transfer agent would not permit an overissue of stock nor would the registrar sign stock improperly issued.

It is obvious that the work of a transfer agent and registrar to be effective must be discharged by persons or institutions of the highest character and unquestioned standing. For this reason trust companies are usually appointed.

Speaking generally, the employment of transfer agents

and registrars is advisable whenever transfers of stock are likely to be numerous. The procedure involved is simple in theory but in practice involves much detailed work. Also it is usually desirable that transfers be effected rapidly and accurately. The employment of the proper transfer agent and registrar, or transfer agent alone, relieves the corporate officials from the detailed work and responsibility involved, reduces the possibility of fraud or error in the issuance of stock to a minimum, and affords a general safety and convenience not otherwise secured. Stock exchanges require that the securities listed by them shall be issued through suitable transfer agents and registrars.

§ 41. Lost Certificates.

A stockholder, so shown by the books of his company, is entitled to every right and privilege of a stockholder without regard to the whereabouts of his certificate.[5]

When certificates are lost, the owner usually desires to have new certificates issued, not in order to secure any corporate rights but merely to have his interest in such shape that he may readily sell, pledge, or otherwise use his stock. Stockholders have a general right to certificates[6] and, if their certificates are lost, to have them replaced, but, before it reissues any such certificates, the corporation on its part has the right to require reasonable safeguards for its own protection.[7] The by-laws should outline the proper procedure,[8] which must conform to any statutory requirements.

A bond of indemnity is usually and properly required before a lost certificate is replaced, as it is always possible

[5] National Bank v. Watsontown Bank, 105 U. S. 217 (1881); Birmingham National Bank v. Roden, 97 Ala. 404 (1892); Wheeler v. Millar, 90 N. Y. 353 (1882).
[6] Buffalo, etc. R. R. v. Dudley, 14 N. Y. 336 (347) (1856); Fletcher v. McGill, 110 Ind. 395 (1887).
[7] Guilford v. W. U. Tel. Co., 43 Minn. 434 (1890); Butler v. Glen Cove Starch Mfg. Co., 18 Hun 47 (1879).
[8] The usual procedure is set forth in the by-laws found in Conyngton's "Corporate Organization," Form 9, Article I, § 2.

that the missing certificate may turn up in the hands of an innocent purchaser for value, who might have cause for damages against the corporation if it refused to recognize his rights. It is but seldom wise to reissue lost certificates unless such bond is given. Only the absolute and irrecoverable loss of a certificate, as in case of its unquestioned destruction by fire, would justify an unprotected reissue.

When the value of missing certificates is considerable and the circumstances are doubtful. it is sometimes best for the directors to refuse absolutely to replace the certificates until the owner secures an order from some court of competent jurisdiction. When this is done the directors are relieved from all responsibility in the matter. The officers of the company should never take the responsibility of reissuing a lost or stolen certificate of stock without express authorization from the board of directors. Should they do so and the missing certificate turn up in such a way that loss is involved, they would be responsible to the corporation.

In case certificates are lost or stolen, the secretary of the company or its transfer agent should be immediately notified, and such other steps be taken as may be necessary to prevent the negotiation of the missing certificates. When lost certificates are endorsed in blank and are presented to the transfer officers of the corporation before these officials have been notified of the loss, they may make the transfer, and the corporation will not be liable to the owner if the circumstances were such as to justify the belief that such transfer was regular and in good faith. If, however, the proper officials have been warned of the loss, or the circumstances were such as to put them on notice, they could not make such transfer without liability.

A stock certificate is not perfectly negotiable as are

notes, drafts and other forms of negotiable paper, but is quasi-negotiable, and usually an innocent purchaser for value of a properly endorsed certificate is protected.[9] "Excepting in cases of certificates transferred in blank and lost or stolen without negligence on the part of the owner, a *bona fide* purchaser is protected now in almost every instance where he would be protected if he were purchasing a promissory note or other negotiable instrument."[10] Thus a party finding or stealing certificates of stock even though these certificates are endorsed in blank, takes no title nor does any one who buys the lost or stolen certificates from him, the title remaining in the original owner.[11] If, however, a lost or stolen certificate is surrendered to the corporation and a new certificate received in its place—as might readily be the case if the corporate officials were not promptly notified of the loss—any purchaser in good faith of this new certificate takes a clear title. The original owner has then lost all rights in the matter save that of bringing suit against those through whose hands the certificate passed before its reissue by the corporation.

In case of any doubt or any dispute as to ownership of a certificate, no transfer should be made by the corporation until the true ownership has been definitely determined.

§ 42. Pledges of Stock.

The quasi-negotiability of stock renders its use as a pledge or collateral security a very simple matter, effected by the mere endorsement and delivery of the certificate.[12]

[9] Knox v. Eden Musee Co., 148 N. Y. 441 (1896); Simpson v. Jersey City Contracting Co., 165 N. Y. 193 (1900); Bank v. Lanier, 11 Wall. 369, 377 (1870); Trust & Sav. Co. v. Home Lumber Co., 118 Mo. 447 (1893).

[10] 2 Cook on Corp., § 416; Railway Co. v. Bank, 56 O. St. 351 (1891); Real Estate Trust Co. v. Bird, 90 Md. 229 (1899).

[11] East Birmingham Land Co. v. Dennis, 85 Ala. 565 (1888); O'Herron v. Gray, 168 Mass. 573 (1897); Bangor Electric, etc. Co. v. Robinson, 52 Fed. Rep. 520 (1892).

[12] Christian v. Atlantic & N. C. R. R., 133 U. S. 233 (1890); Seymour v. Hendee, 54 Feb. Rep. 563 (1893); Atkinson et al, v. Foster, 134 Ill. 472 (1890).

The usual procedure is for the pledgor to give his note for the amount secured, the note reciting the pledge of stock and the terms under which it is held. These terms usually empower the pledgee to sell the collateral without notice to the pledgor. (See Form 164.) The delivery of the stock as security is, however, the essential feature constituting the pledge without any written contract,[13] which is necessary only as a record and proof of the transaction.

The pledgee may or may not, at his option, have the pledged stock transferred on the books of the corporation to his own name.[14] If transferred, the word "pledgee" should follow the name of the owner on the new certificates of stock or otherwise the phrase "as collateral security" should appear on the certificates so as to definitely characterize the nature of the pledgee's holding. A memorandum of the facts should also appear in the stock ledger against the entry in both pledgee's and pledgor's accounts.[15] Such entries, if showing clearly the nature of the transaction, relieve the pledgee of any corporate liabilities involved in the absolute ownership of the stock.[16] In some states the pledgee is expressly relieved from these liabilities by statute.[17] When stock is transferred on the books of the company to the pledgee, the voting right, as a general rule and in the absence of any agreement to the contrary, follows the stock.[18] In some states, however, as in New York, the owner of the stock may demand and receive a proxy from the pledgee upon paying any necessary expenses. In other states, as New Jersey, if it ap-

[13] Masury v. Arkansas National Bank, 93 Fed. Rep. 603 (1899); Spreckels v. Nevada Bank, 113 Cal. 272 (1896); Brick v. Brick, 98 U. S. 514 (1878); Mount Holly, etc. Co. v. Feree et al, 17 N. J. Eq. 117 (1864).

[14] Day v. Holmes, 103 Mass. 306 (1869); Fitchburg Savings Bank v. Torrey, 134 Mass. 239 (1883); Anderson v. Philadelphia Warehouse Co., 111 U. S. 479 (1884).

[15] 2 Cook on Corp., § 466.

[16] Pauly v. State Loan & Trust Co., 165 U. S. 606 (1897); Tourtelot v. Stolteben, 101 Fed. Rep. 362 (1900).

[17] Barre National Bank v. Hingham Manuf. Co., 127 Mass. 563 (1879); Burgess v. Seligman, 107 U. S. 20 (1882).

[18] Commonwealth v. Dalzell, 152 Pa. St. 217 (1893); Re Argus Printing Co., 1 N. Dakota 434 (1891); S. C., 12 L. R. A. 781, and note.

pears on the transfer books that such stock has only been transferred as a pledge, the owner retains the right to vote thereon. Statutes protecting the voting rights of pledgors are found in many states.

When stock is pledged, the pledgee is entitled to receive any dividends declared meanwhile, and if the stock has been transferred to the pledgee, or if the company has been properly notified that the stock is held in pledge, they must be paid to him.[19] In the absence of notice or transfer, as the pledgor remains the owner of record of the pledged stock, dividends are properly paid to him, and the pledgor and pledgee must then settle the ownership of the dividends between themselves. On the termination of the pledge, the pledgee must account for any dividends received by him.

Upon default in payment of the amount it secures, the pledgee has the right to sell pledged stock. If the note or other memorandum of the pledge contains no agreement or provision for such sale, the pledgee must give the pledgor due notice of his intention to sell the stock and thereupon may sell the stock at public sale and apply the proceeds to the payment of his debt. Notice must be given the pledgor a reasonable time before the sale and such notice must specify the time and place of sale, both of which must also be reasonable. Two days' notice has on occasion been held sufficient,[20] and four days' notice when the parties lived in different towns.[21]

When notice of time and place is waived by express terms of the pledgor's notice, as is usually the case, the pledgee may sell at any time after default. The sale must be by public auction, unless otherwise agreed, must be in good faith and an endeavor must be made to obtain a fair price. The pledgee himself may not bid the stock in,

[19] Fairbanks v. Merchants National Bank, 132 Ill. 120 (1889); Guarantee Co. v. East Rome Co., 96 Ga. 511 (1895); Boyd v. Conshohocken Worsted Mills, 149 Pa. St. 363 (1892).
[20] Edwards on Bailments, § 285.
[21] Guinzburg v. Downs Co., 165 Mass. 467 (1896).

either directly or indirectly. If he does, the pledgor may have the sale set aside. In many of the states the whole matter of the pledge of stock and its sale is regulated by statute.

At any time before sale the pledgor may pay the debt and all interest and any reasonable expense involved in the preliminaries of the sale and claim his stock. This stock need not be the particular shares pledged but merely an equal amount of the same stock.

§ 43. Restrictions on Transfers.

Every stockholder whose stock is paid for in full is entitled to transfer his stock freely. Even where the stockholders have entered into a contract to restrain the alienation of stock or have enacted by-laws for the same purpose, the courts have usually set the restraining provisions aside as being contrary to public policy.[22]

In some states the statutes prescribe specifically that stock subscribed for but not fully paid in accordance with the subscription agreement is not transferable save with the consent of the corporation. Elsewhere charter or by-law provisions may give the corporation the right to refuse to register transfers of unpaid stock.[23] In the absence of such provision, the right of transfer is absolute and may be enforced against the corporation.[24] (See § 48.)

At times the restriction of stock transfers becomes desirable and various plans have been attempted to effect this end. The courts, however, defend this right so strictly that its legal waiver is difficult. Perhaps the most

[22] Johnson v. Laflin, 103 U. S. 800 (1880); Fisher & Asso. v. Essex Bank, 5 Gray (Mass.) 373 (1855); Quiner v. Marblehead, etc. Co., 10 Mass. 476 (1813); Kinnan v. Sullivan County Club, 26 App. Div. 213 (1898).
[23] Barrett v. King, 181 Mass. 476 (1902). For a discussion of the best means to restrain the sale of stock, see Conyngton on Corp. Organization, § 217.
[24] Craig v. Hespeira L. & W. Co., 113 Cal. 7 (1896); Kinnan v. Sullivan County Club, 26 App. Div. 213 (1898).

successful method when all the parties are in agreement as to the advisability of such restraint is to form a voting trust for a certain number of years. All the stock—or all the stock entering into the agreement—is placed in the hands of voting trustees appointed under the terms of the voting trust agreement and is held by them, withdrawn from sale, for the period of the trust. Such arrangements are effectual and are upheld by the courts in most states if they do not extend for an unreasonable period.[25] In some states they are expressly permitted by the statutes under restrictions as to the term of their duration.

[25] Brown v. Britton, 41 App. Div. 57 (1899); Williams v. Montgomery, 148 N. Y. 519 (1896); Hey v. Dolphin, 92 Hun (N. Y.) 230 (1895); See Conyngton on Corp. Organization, § 217.

CHAPTER VII.

RULES REGULATING TRANSFERS.

§ 44. Responsibility of Corporation as to Transfers.

It is the duty of the corporation to record all lawful transfers, and if it refuses, the record may be compelled by recourse to the courts[1] or the corporation may be held liable in damages.[2] If there is doubt as to the identity of the transferee or the authenticity of the transferrer's signature, the corporation may require proper proof thereof, and in cases where two parties claim the ownership of stock or where the corporation has been notified not to register a transfer, the corporation may, if there is any real uncertainty or reason therefor, decline to make any record on the corporate books until the matter has been settled by the courts.[3] (See § 38.)

The corporation is responsible if its officials record a forged transfer.[4] It is the duty of the corporate officials to know the stockholders' signatures or otherwise to secure evidence of their authenticity before making a transfer. For this purpose, they may require the personal attendance of the transferrer or clear proof that his signature is genuine. (See §§ 38, 45.)

In case stock certificates endorsed in blank are lost or stolen, the corporation is not liable for receiving the cer-

[1] Real Estate Trust Co. v. Bird, 90 Md. 229 (1899); Rice v. Rockefeller et al, 134 N. Y. 174 (1892).
[2] Hine v. Commercial Bank of Bay City, 119 Mich. 448 (1899); Ralston v. Bank of California, 112 Cal. 208 (1896); Commercial Bank, etc. v. Kortright, 22 Wend. (N. Y.) 348 (1839).
[3] Tel. Co. v. Davenport, 97 U. S. 369 (1878).
[4] Cushman v. Thayer, etc. Co., 76 N. Y. 365 (1879); Chicago Edison Co. v Fay, 164 Ill. 323 (1896).

tificates and transferring the stock represented thereby, if the circumstances are not suspicious and the transfer is made before notice of the theft or loss is received by the corporation.[5] (See § 41.)

§ 45. Duties of Officers as to Transfers.

"The officers of the company are the custodians of its stock books, and it is their duty to see that all transfers of shares are properly made, either by the stockholders themselves or persons having authority from them. If upon the presentation of a certificate for transfer they are at all doubtful of the identity of the party offering it with its owner, or if not satisfied of the genuineness of a power of attorney produced, they can require the identity of the party in one case, and the genuineness of the document in the other, to be satisfactorily established before allowing the transfer to be made. In either case they must act on their own responsibility."[6] The record of any proper transfer, if refused, may be compelled by either transferrer or transferee.

§ 46. Who May Transfer Stock.

Any person of full age who has not been adjudged incompetent, may transfer stock standing in his own name. All who are duly authorized to represent others, as attorneys, trustees, guardians, executors and administrators, may transfer stock belonging to these others upon giving satisfactory evidence of their authority so to do. Stock belonging to minors and others incompetent to contract may be transferred only by their legally appointed and authorized representatives.

The holder of unpaid stock, i. e. stock upon which the

[5] Mandelbaum v. North American Mining Co., 4 Mich. 464 (1857); Barstow v. Savage Min. Co., 64 Cal. 388 (1883); Dewing v. Perdicaris, 96 U. S. 193 (1877); Wells v. Smith, 7 Abb. Pr. 261 (1858); Brown, Lancaster & Co. v. Howard Fire Ins. Co., 42 Md. 384 (1875).

[6] Tel. Co. v. Davenport, 97 U. S. 369 (1878).

subscription or purchase price has not been fully paid, may as a rule transfer his stock without restriction, but in some states by statute provision such transfer is prohibited or may only be made by consent of the corporation.

§ 47. To Whom Stock May be Transferred.

There are but few restrictions as to the transferees of stock. A corporation may, if its officials see fit, refuse to transfer stock to any one not competent to assume the obligations of a stockholder, such as a minor or a person of unsound mind. (See § 53.) Also a corporation when in a failing condition may refuse to transfer stock to an irresponsible transferee.[7] Beyond these few exceptions, stock may be transferred freely and in the absence of fraud the transfer is valid and must be recorded by the corporation.

§ 48. Liability Involved in Transfers.

The liability of unpaid stock obtains in every state of the Union. (See § 73.) Full-paid stock, on the other hand, involves no liability to the corporation or its creditors whatsoever, save in the case of financial institutions —on the stock of which a further liability is usually imposed—and in those states in which by express statutory provision liabilities are imposed or assessments are permitted on stock even though full-paid. (See § 74.)

When liabilities do or may exist on full-paid stock, and transfers of such stock are made between parties competent to contract, any liabilities accruing before the transfer remain with the transferrer, but any liabilities accruing thereafter pass to the transferee.

The liabilities of unpaid stock are affected by statute provisions in a number of states (See § 74), but otherwise are subject to the general rules that the transferrer

[7] 2 Cook on Corps., § 396.

is liable for any calls or assessments already made and which are still unpaid,[8] but the transferee is liable for the amount that has not yet been called.

An exception to this general rule obtains when a transfer has been made but has not been recorded on the books of the corporation. In such case the transferrer is still the owner of record (See § 33) and is therefore still liable for any amounts unpaid on his transferred stock, and if calls are made before the transfer is recorded, must pay them. He may collect these payments, if he can, from the transferee.

Another exception to the general rule is found when the corporation has wrongfully issued stock certificates marked "Full-paid," in which case any *bona fide* purchaser of such certificates without knowledge of the true character of the stock takes it free from liability to the corporation and to corporate creditors in case the corporation becomes insolvent.[9] This is also true when a purchaser in good faith takes over stock under such circumstances as to lead him to believe it is full-paid. In any such case as far as the transferee is concerned, the stock is held to be full-paid and the corporation or its creditors cannot hold him liable.

In the following cases the rule as to the liabilities involved in transfers of stock is as set forth.

A married woman may take stock in her own name, in practically every state of the Union, and take therewith every right and responsibility of ownership.[10]

A minor may receive a transfer of stock and the corporation may record it if the corporate officials see fit, but as the minor may at will repudiate the whole transaction, the transferrer remains liable.[11] (See § 53.) The same

[8] May v. McQuillan, 129 Mich. 392 (1902); Brigham v. Mead, 92 Mass. 245 (1865); Sigua Iron Co. v. Brown, 171 N. Y. 488 (1902); Webster v. Upton, Assignee, 91 U. S. 65 (1875); Pullman v. Upton, 96 U. S. 328 (1877).

[9] Rochester, etc. Co. v. Roe, 7 App. Div. (N. Y.) 366 (1896); Sprague v. National Bank, 172 Ill. 149 (1898); 42 L. R. A. 606.

[10] Cook on Corp., §§ 250, 396.

[11] Rochizky v. De Haven, 97 Pa. St. 202 (1881); Foster v. Chase, 75 Fed. Rep. 797 (1896); Foster v. Wilson, 75 Fed. Rep. 797 (1896).

rule holds as to a transfer to a person known to be insolvent, the transferrer not being relieved from liability.[12] (See § 47.)

A transfer to an agent, attorney, trustee, guardian, administrator or executor in his own name followed by a statement of the capacity in which he acts, as "James H. McLane, Agent," renders him personally liable on the stock so held,[13] except where expressly exempted by statute.[14] (See §§ 51-52.) The same is true where a transfer is made to the treasurer of a corporation in his own name, as "Henry James, Treasurer."[15]

A transfer to two persons, as "George Howard and John Mackel," makes them tenants in common and each may be held for one-half of any liability on such stock and both must join in a transfer.[16] A transfer to a firm, however, as "Howard & Mackel," does not have this effect but creates a partnership holding and a partnership liability.[17] (See § 56.)

A transfer to an existing corporation authorized to hold stock, as "The Strathmore Scale Company," renders the assignee corporation liable as is an individual on the stock transferred. A transfer to a membership corporation or unorganized association, as "Grace Methodist Church" or the "Brooklyn Decorators' Union," is of doubtful legality, and, if the matter of liability is of importance, should not be recorded by the corporation until the right of the body to hold stock has been proved. If not authorized to hold stock, it cannot assume the liabilities of a stockholder.

A transfer to a dummy stockholder, as in case of trans-

[12] Bowden v. Johnson, 107 U. S. 251 (1882); Rochester, etc. Co. v. Raymond, 158 N. Y. 576 (1899).

[13] McKim v. Glenn, Trustee, 66 Md. 479 (1887); Baines v. Babcock, 95 Cal. 581 (1892); Wadsworth v. Laurie, 164 Ill. 42 (1896); Brown v. Ellis, 103 Fed. Rep. 834 (1900); Winston v. Dorset Pipe, etc. Co. 129 Ill. 64 (1889).

[14] Davis v. Essex Baptist Society, 44 Conn. 582 (1877); Lucas v. Coe, 86 Fed. Rep. 972 (1898).

[15] 2 Cook on Corp., § 724, and notes.

[16] Markell v. Ray, 75 Minn. 138 (1898).

[17] Barton National Bank et al. v. Atkins et al., 72 Vt. 33 (1899).

fer to any other agent, renders the dummy liable if he has property sufficient to make the liability effective.[18] The party for whom the dummy is acting is, however, likewise liable as an undisclosed principal.[19] A transfer to a pledgee in his own name without qualification renders him liable. It is otherwise, however, if the nature of the transfer is shown by its form, as "Howard Fielding, Pledgee."[20]

§ 49. Form of Transfer.

A general form of assignment for stock is always printed or engraved upon the back of each stock certificate (See Forms 19, 20.) If there were any reason therefor, stock might with equal effect be transferred by means of a separate assignment written or printed and attached to its certificate. In such case the certificate should be more fully described and identified than is the case in the usual form of assignment. (See § 38.)

The signature to the assignment of a stock certificate must correspond exactly with the name on the face of the certificate and should be witnessed. If the signature of the transferrer is entirely unknown to the transfer officer or agent, it should be guaranteed by some responsible party or be acknowledged before a notary public.

If the party signing a transfer of stock acts in a representative capacity, a description of the capacity in which he signs should be added to the signature, as "Howard Fielding, Trustee for Jane Hathaway." If a certificate, issued in her maiden name, is to be transferred by a married woman, the signature should be in the following form: "(Mrs.) Alice H. Walker formerly Alice H. Ainsley." Occasionally a married woman holding stock in her maiden name wishes it transferred to the name acquired by marriage. In such case the signature to the assignment is similar to that just given and the blank for the name of the transferee is filled in as follows: "(Mrs.) Alice H. Walker."

[18] Dunn v. Howe, 107 Fed. Rep. 849 (1901).
[19] Pauly v. State, etc. Co., 165 U. S. 606 (1897); Davis v. Stevens, 7 Fed. Cas. 177 (1879).
[20] Robinson v. Southern National Bank, 180 U. S. 295 (1901); Pauly v. State Loan & Trust Co., 165 U. S. 606 (1897).

The name of the transferee should be written in the proper blank of the assignment form without abbreviation, complimentary title or suffix, though where the transferee is a woman, the designation "(Miss)" or "(Mrs.)," as the case may be, is frequently and properly placed before the name.

When a transfer of stock is to be received by an agent, it should be made out in the name of his principal, unless the agent is willing to assume any statutory liability on the stock transferred. (See § 48.) When stock is transferred by an agent or one acting for another, the name of the principal should be appended to the assignment followed by the agent's name and a statement of the capacity in which he signs; thus, "Frank H. McClelland by Howard James, Attorney."

§ 50. Transfers to and by Agents.

Any person competent to contract and wishing to transfer stock, may transfer stock or receive the transfer of stock through an agent. In case of transfer, the agent or attorney in fact should present the certificate to be transferred, accompanied by his power of attorney or a duly acknowledged copy thereof, which should be left on file with the transfer agent or officer of the corporation. Express authority to transfer stock should be given by the power of attorney and, if necessary, evidence should be furnished that the signature to the power is genuine, that the instrument is still in force and that the party presenting it is the party named therein.[21]

[21] Tel. Co. v. Davenport, 97 U. S. 369 (1878); Bayard v. Farmers', etc. Bank, 52 Pa. St. 232 (1866); Davis v. Bank, 2 Bing. (Eng. Rep.) 393 (1824); Ireland v. Hart, 86 L. T. Rep. (Eng. Rep.) 384 (1902).

In case of transfer by an agent, it is the duty of the corporation to require satisfactory evidence of the agent's authority. Otherwise in case of a fraudulent transfer the corporation is liable.[22] The corporation is also liable if, with knowledge of the facts, it recognizes a power of attorney executed by a minor, an insane person or any one else unable to contract.[23]

In case of transfers of stock to an agent, the certificates, as stated, should be issued in the principal's name, the agent merely receiving the certificates and receipting therefor for account of his principal.

If a certificate is endorsed in blank and entrusted to an agent and the agent assigns the stock fraudulently, the stockholder has no recourse save against the agent, as his own act made it possible for his agent to perpetrate the fraud. The rule is different, however, if the agent transfers the stock directly into his own name. In such case, if the corporation knew of the agency, it is liable,[24] and the original owner will not be estopped from reclaiming the stock.[25]

§ 51. Transfers to and by Executors and Administrators.

A corporation cannot refuse to record transfers of stock belonging to an estate, made by the executor or administrator of such estate, provided the proper letters testamentary or letters of administration are presented for inspection.[26] Such executor or administrator may transfer the stock directly from the deceased party to a purchaser, or may transfer the stock to his own name as administrator or executor,[27] or may pledge the stock if this be necessary. The corporation should not, however, permit him to transfer the stock into his individual name.[28] When there are two or more executors of an estate, one alone may not transfer stock; all must join.[29]

Before a transfer of stock by an executor or administrator is allowed, a certified copy of the appointment of the party acting should be filed with the corporation.[30] Or in case there is a will, a certified copy of this instrument should be presented for inspection.[31] The will or certified copy should always be inspected by the corporate officials before the transfers of an executor are recognized, as the free right of transfer may be restricted by the terms of the instrument under which he is acting, and if so, purchasers and corporate officials are bound to take notice of and be governed by these limitations.[32]

Corporate officials recording transfers of executors or administrators with knowledge that a fraud or breach of official duty is involved therein, are liable to the estate.[33] An administrator or executor cannot compel the transfer of stock belonging to the estate when the corporation is domiciled in another state. A purchaser of stock from such an administrator or executor can, however, compel the corporation to recognize his right of property in the purchased stock and to issue to him new certificates.[34]

When a trust discharged by an executor or administrator continues for a long period, the executor or admin-

[22] Tafft v. Presidio, etc. R. R. Co., 84 Cal. 131 (1890); Caulkins v. Gaslight Co., 85 Tenn. 683 (1887); Cooper v. Illinois Central R. R. Co., 38 App. Div. (N. Y.) 22 (1899); Geyser-Marion Gold-Min. Co. v. Stark, 106 Fed. Rep. 558 (1901); Tel. Co. v. Davenport, 97 U. S. 369 (1878).

[23] Chew & Goldsborough v. Bank of Baltimore, 14 Md. 299 (1859).

[24] McNeil v. Tenth National Bank, 46 N. Y. 325 (1871); O'Herron v. Gray, 168 Mass. 573 (1897); Nelson et al, Ex'rs v. Owen, 113 Ala. 372 (1896); *see* Knox v. Eden Musee Co., 148 N. Y. 441 (1896); Tafft v. Presidio, etc. R. R. Co., 84 Cal. 131 (1890).

[25] Tel. Co. v. Davenport, 97 U. S. 369 (1878); McNeil v. Tenth National Bank, 46 N. Y. 325 (1871); Elliott v. Miller & Co., 158 Fed. Rep. 868 (1908).

[26] Carter v. Manufacturers' Nat. Bank, 71 Me. 448 (1880); Marbury, Trustee v. Ehlen et al, 72 Md. 206 (1890); Wooten v. Railroad, 128 N. C. 119 (1901).

[27] London, Paris & Am. Bank v. Aronstein, 117 Fed. Rep. 601 (1902).

[28] 2 Cook on Corp., § 398; London, Paris & Am. Bank v. Aronstein, 117 Fed. Rep. 601 (1902).

[29] Bohlen's Estate, 75 Pa. St. 304 (1874); Tunis v. Pass. R. R. Co., 149 Pa. St. 70 (1892); 10 Cyc., p. 594.

[30] Schell v. Deperven, 198 Pa. St. 591 (1901).

[31] Carter v. Manufacturers' Nat. Bank, 71 Me. 448 (1880); Marbury, Trustee v. Ehlen et al, 72 Md. 206 (1890); Wooten v. Railroad, 128 N. C. 119 (1901).

[32] Nutting et al, v. Thomasson et al, 57 Ga. 418 (1876); Weyer, Admr. v. Second Nat. Bank of Franklin, 57 Ind. 198 (1877).

[33] Shaw v. Spencer, 100 Mass. 382 (1868); Smith v. Ayer, 101 U. S. 320 (1879); Gottberger v. United States National Bank, 131 N. Y. 595 (1892); Moore v. American Loan & Tr. Co., 115 N. Y. 65 (1889).

[34] Matter of Fitch, 160 N. Y. 87 (1899); Luce v. Railroad, 63 N. H. 588 (1885).

istrator becomes in fact a trustee and his transfers then become subject to the rules governing trustees.[35] (See § 52.) The corporation must then refuse the transfer of stock unless the executor or administrator brings satisfactory evidence of his right to make such transfer.

§ 52. Transfers to and by Trustees.

The corporate officials must refuse the transfers of a trustee unless his authority is clearly established. His appointment must be in writing and expressly authorize the sale or transfer of stock. If such instrument exists in due form, the trustee may compel transfers by the corporation when the certificates of stock are duly assigned by him in his representative capacity.[36]

The corporation is responsible if it permits any transfer by a trustee not authorized by the trust instrument.[37] If there is more than one trustee, all must sign the transfer,[38] which should be accompanied by a properly certified copy of the instrument of trust establishing clearly the authority of the trustees to make such transfer. Trustees appointed by court should show a copy of the court appointment.

Before stock is purchased from a trustee—provided the certificates of stock indicate that he is a trustee—the purchaser should ascertain whether the trustee is authorized to make the sale.[39] "Certificates for shares of stock running to 'A. B., Trustee,' or to 'A. B. in trust,' without disclosing the names of beneficiaries or the particulars of the trust, is notice to a purchaser of

[35] Peck v. Bank, 16 R. I. 710 (1890); 2 Cook on Corp., § 398.
[36] Bird v. Chicago, etc. R. R., 137 Mass. 428 (1884); Loring v. Salisbury Mills, 125 Mass. 138 (1878).
[37] Marbury, Trustee v. Ehlen et al, 72 Md. 206 (1890); Geyser-Marion Gold-Min. Co. v. Stark, 106 Fed. Rep. 558 (1901); Bird v. Chicago, etc. R. R., 137 Mass. 428 (1884); Loring v. Salisbury Mills, 125 Mass. 138 (1878).
[38] Bohlen's Estate, 75 Pa. St. 304, 312 (1874); Oliver v. Governor & Co., 86 L. T. Rep. 248 (1902).
[39] First National Bank v. National Broadway Bank, 156 N. Y. 459 (1898); Shaw v. Spencer et al 100 Mass. 382 (1868).

shares that 'A. B.' does not hold them in his own right but as a trustee."[40]

When transfers are made to a trustee, his representative capacity should be clearly indicated by reference in the certificate to the will or other instrument under which the trusteeship was created,[41] and the name of the beneficiary should be mentioned when possible; thus, "John Hayden, Trustee for Howard Waller under the will of Horace Waller."

§ 53. Transfers to and by Minors.

A corporation may refuse to transfer stock to a minor as he is incapable of assuming the obligations of a stockholder.[42] In case such a transfer is made, the liability of the transferrer as a stockholder of the corporation continues until the minor becomes of age and ratifies the transfer.[43] Minors may receive and hold stock in their own names but cannot transfer stock so held. Assignments should therefore be made to their guardians in the following form: "Alfred Carr (minor) under guardianship of Henry B. Boerum."

A minor is himself unable to make a legal transfer of stock even though the stock is held in his name, and the corporation renders itself liable for any resulting damages if it records such transfer. The only legal method of transferring a minor's stock is therefore by assignment executed by a duly appointed guardian.[44] (See § 54.)

§ 54. Transfers to and by Guardians.

Certificates for stock owned by minors or other persons not competent to contract should properly be issued

[40] Gerard v. McCormick, 130 N. Y. 261 (1891).
[41] Geyer-Marion Gold-Min. Co. v. Stark, 106 Fed. Rep. 558 (1901).
[42] 2 Cook on Corp., § 396.
[43] Foster v. Wilson et al, 75 Fed. Rep. 797 (1896); Ruchizky v. De Haven, 97 Pa. St. 202 (1881).
[44] Smith v. Baker, 42 Hun (N. Y.) 504 (1886); White v. New Bedford, etc. Corp., 178 Mass. 20 (1901).

in the name of the trustee or guardian of such person. (See § 53.) In most states parties not competent to contract cannot transfer stock and therefore all transfers of stock belonging to such persons must be made by their legally appointed trustees or guardians.

Usually the statutes require the guardian of a minor to be specially authorized by order of a proper court before he may sell stock belonging to his ward, and the corporation cannot safely record a transfer of a minor's stock though made by his guardian until it ascertains the existence of such authority.[45] The guardian should therefore secure proper authority and file a certified copy thereof with the secretary of the corporation before or at the time the transfer is made.

When no statutes regulate the sale of stock by guardians, a guardian may freely transfer stock without any special court authorization,[46] though in this case it is safer for him to obtain authority from the court as a measure of self protection. A guardian has no authority to pledge stock.[47]

§ 55. Transfers to and by Corporations.

Under the common law, one corporation cannot hold stock in another.[48] In a number of states, however, corporations are by statute expressly authorized to hold stock of other corporations, or may be so authorized by inclusion of the power in their charters. Even where this is not the case, the general rule has been relaxed, and it may now be said in general that a corporation may become a stockholder in another corporation wherever the stock is acquired in pursuance of a legitimate purpose of

[45] Atkinson v. Atkinson, 90 Mass. 15 (1864); O'Herron v. Gray, 168 Mass. 573 (1897).
[46] Lamar v. Micou, 112 U. S. 452 (1884).
[47] O'Herron v. Gray, 168 Mass. 573 (1897).
[48] People v. Chicago Gas Co., 130 Ill. 268 (1889); De La Vergne Co. v. German Savings Inst., 175 U. S. 40 (1899).

its creation.[49] Hence an investment company, an insurance company, a trust company and others of similar character, may properly invest in and hold the stock of other corporations. Also corporations may acquire stock by foreclosure proceedings or may take it in order to escape loss, as for instance, in settlement of a debt.[50] Also the so-called "holding" corporations are not uncommon in the present day, which are expressly authorized to hold stock in other corporations and have been organized for this purpose.

In all cases where the corporation properly holds stock it has all the rights of a stockholder as to such stock, including the right to receive dividends and to have its representatives vote and, when duly elected, act as directors or officers of the corporation by which the stock was issued.[51]

As a rule, a corporation may buy its own stock with its surplus profits, if not prohibited by statute and all its stockholders acquiesce.[52] It may not, however, do so save from surplus profits—unless expressly authorized thereto by statute—since such procedure impairs and practically amounts to an illegal reduction of its capital stock.

Transfers of stock held by associations, societies or corporations must be made under the corporate seal by the duly authorized officers, and must be accompanied by a properly certified copy of the resolution or by-law authorizing the transfer. The certificate of authority should include a designation and statement of the due election of the officers who are to act. Occasionally transfer agents or officers require an exemplified copy of the minutes or

[49] Booth v. Robinson, 55 Md. 419 (1880); Layng v. A. French Spring Co., 149 Pa. St. 308 (1892).
[50] Robotham v. Prudential Ins. Co., 53 Atl. Rep. (N. J.) 842 (1903).
[51] Camden, etc. R. R. Co. v. Elkins, 37 N. J. Eq. 273 (1883); Rogers v. Nashville, etc. Ry. Co., 91 Fed. Rep. 299 (1898); Windmuller v. Standard Distilling, etc. Co., 114 Fed. Rep. 491 (1902); Oelbermann v. New York, etc. R. Co., 77 Hun 332 (1894).
[52] See 1 Cook on Corp., § 311; Lowe v. Pioneer Threshing Co., 70 Fed. Rep. 646 (1895).

by-laws of the organization before they will register such a transfer. (See Form 176.)

When stock is acquired by an association or society not incorporated, it is usually placed in the hands of trustees.

When stock of another corporation is acquired by a corporation authorized to hold such stock the assignment may run direct to the corporation or to its treasurer or to a trustee for the corporation (See § 39), though if the stock actually and unreservedly belongs to the corporation, there is no reason why it should not be held in the corporate name. The certificates for such stock, assigned in blank or assigned direct to the corporation—or the treasurer or a trustee if desired—are turned over to the treasurer or other designated officer of the transferee corporation, who presents the certificates for reissue, the new certificates being taken in the name of the transferee as indicated by the completed assignments on the back of the certificates.

When such stock is held in the corporate name and is to be transferred, the corporate signature is affixed to the assignment by the duly authorized officer or officers of the assigning corporation. The corporation which issued the stock, before registering the transfer on its books may and should require proper evidence that these officers were properly empowered to affix the corporate signature. This proof is best supplied in the form of a certified copy of the resolution whereby the transfer of the stock was authorized.

The procedure is much the same where stock is held in the name of the treasurer or a trustee for the corporation, save as to the signature to the assignment.

§ 56. Transfers to and by Partnerships.

A partnership may deal in stocks as freely as may individuals, and if it is a trading partnership, i. e. a partnership formed for the purpose of buying, selling or manufacturing,[53] any member of the firm may sign the partnership name to a transfer of stock if this stock is held in the firm name.[54]

The signatures of the individual partners to the assignment is not necessary, the firm name affixed by one of the partners being legally sufficient. The corporation may require evidence when necessary of the assigning partner's membership in the firm.

If stock is issued to the partners as individuals, as "To John Gray and Henry H. Harriman" they are tenants in common and both the individuals named must join in any transfer. The same is true when the stock is held in the firm name if the partnership is not a trading partnership. Thus if stock is held by a professional firm, even though in the firm name, the partners must sign their individual names to the transfer. In the absence of objection, any partner may vote on stock held in the firm name but in case of disagreement the stock cannot be voted.[55]

One joint owner cannot sell or vote stock standing in the names of two or more, but each name must be signed to its assignment or proxy.[56]

§ 57. Summary of Rules Regulating Transfers.

The following rules regulating transfers of stock are those recognized by the trust companies of New York City and are given here as a very clear, concise summary of the general laws governing the subject.

(1) The assignment of a certificate should be executed by the stockholder personally or by duly authorized attorney. In the latter case the assigned certificate should

[53] Lee v. Bank, 45 Kan. 8 (1890); 11 L. R. A. 238.
[54] Moynahan v. Prentiss, 10 Colo. App. 295 (1897); Comstock v. Buchanan, 57 Barb. 127 (1864).
[55] Matter of Pioneer Paper Co., 36 How. Pr. 111 (1865); Comstock v. Buchanan, 57 Barb. 127 (1864).
[56] Tunis v. R. R. Co., 149 Pa. St. 70 (1892); S. C., 15 L. R. A. 665.

be presented to the transfer officials accompanied by the power of attorney under which the party acts, and the original or a notarial copy of this power should be left on file. Authority to transfer stock should appear in the power of attorney and, if necessary, the authenticity of the signature and the fact that the instrument is still in force, must be proved.

(2) The signature must be witnessed and must correspond with the name as written on the face of the certificate. Signatures unknown to the transfer agent should be guaranteed by some bank official or acknowledged before a notary public.

(3) The name and full post-office address of the transferee should be given in full without abbreviation of any kind. The space for the name of the attorney should be left blank. (The address of the transferee is not entered in the assignment form but may be noted on the certificate or be furnished on a slip attached to the certificate.)

(4) The full first name of the transferee should be given. If the transferee is a woman, the prefix "Mrs." or "Miss" should be used. No other prefixes and no suffixes should be used.

(5) In transferring to a married woman, use her full Christian name—not that of her husband.

(6) In case a new certificate is required because of change of name by marriage, the old certificate should be signed "(Mrs.) Henrietta F. Bowen, formerly (Miss) Henrietta F. Francisco," while in the space for the name of transferee should be placed the name "(Mrs.) Henrietta F. Bowen."

(7) Agents, attorneys, executors, administrators, guardians or trustees should not transfer stock to themselves directly, i. e. as individuals.

(8) Transfers to a minor should give the guardian's name; thus, "Frederick McAllison (a minor) under guardianship of John J. McCall." Transfers to minors should be avoided if possible. Transfers from a minor can be made only by a guardian appointed by the proper court, who must exhibit a duly certified copy of appointment.

(9) A transfer by an administrator must be within his authority as evidenced by a copy of his appointment certified by the proper probate authorities.

(10) A transfer by an executor must be accompanied by a copy of the will and certificate of appointment, both certified by the proper probate authorities. The copy of the will is returned after inspection by transfer agent.

(11) Transfers should not be made to a trustee, agent or attorney who is not appointed by an instrument in writing. If properly appointed, the transfer must describe the trust by reference to the will or other instrument under which it is created.

(12) In transfers by trustees—when more than one—all must sign and the transfer must be accompanied by a properly certified copy of the instrument which authorizes the trustees to sell or transfer such stock.

(13) In transferring to a society or institution, evidence should be required, if necessary, that it has power to hold and transfer stock.

(14) Transfers by associations societies or corporations must be executed by duly authorized officers under seal of the organization, and must be accompanied by a certified copy of the authorizing resolution or by-law.

The regulations also prescribe generally that prompt notice of any change of address of a stockholder, stating the company in which the stock is held, should be sent to the transfer agent for record, and that lost certificates should be reported to the transfer agent as soon as the loss is discovered, with full description of the missing certificate. The number of the certificate, name in which it is issued, and number of shares of stock are usually sufficient description.

PART III.—STOCKHOLDERS.

CHAPTER VIII.
RIGHTS AND POWERS OF STOCKHOLDERS.

(a) Rights of Stockholders.

§ 58. Incorporators, Subscribers and Stockholders.

An "incorporator" is one of those to whom a charter is granted. As ordinarily employed, the term is restricted to those whose signatures appear on an allowed charter application.

A "subscriber" is one who subscribes for one or more shares of stock of a corporation, either before or after organization, while a "stockholder" or "shareholder" is one who holds stock in a corporation. The acceptance of a subscription is sufficient to constitute the subscriber a stockholder.

In most of the states the incorporators must have subscribed for stock in the proposed corporation, their subscriptions appearing in the charter application. Then until the allowance of the charter they are subscribers, but as soon as the charter is granted become incorporators and—the allowance of charter acting as an acceptance of their subscriptions—stockholders as well. (See § 30.) In some states, however, the incorporators may organize the corporation without subscribing for stock and without any permanent connection with the company.

Subscribers to stock whose subscriptions are not included in the charter are not incorporators even though

they subscribe prior to incorporation, nor are their subscriptions effective, nor are they entitled by reason of their subscriptions to take part in the organization meeting until their subscriptions have been accepted in some way by the corporation. (See § 30.) As soon, however, as a subscription is accepted by the corporation, the subscriber becomes a stockholder with all the usual rights and powers, regardless of whether he has paid for his stock.[1] He may in fact pay nothing on his stock and never receive a stock certificate, but nevertheless remains a stockholder until he transfers his stock or it has been forfeited by proper legal procedure.[2] (See §§ 31-33, 36.)

§ 59. Rights of Stockholders.

The rights of stockholders discussed in the present chapter are those general rights which are incident to the ownership of common stock in a stock corporation. The holders of preferred stock have all these same rights—in addition to their special rights—unless denied, varied or restricted by the terms of issue.

As already stated, every stockholder has the right to transfer stock freely (See § 43), to have his name appear as that of a stockholder upon the stock books of the company (See § 35) and when his stock is full-paid, to have a stock certificate. (See § 31.) In addition, the individual rights of a holder of stock are,—

1. To be notified of and participate in all stockholders' meetings in person or by proxy, and usually for each share of stock standing in his name upon the books of the corporation to cast one vote at any election of directors or upon any question that may come before such meeting.

2. To share, in proportion to the amount of

[1] Peninsular Ry. Co. v. Duncan, 28 Mich. 130 (1873); State v. Ferris, 42 Conn. 560 (1875).
[2] Wheeler v. Millar, 90 N. Y. 353 (1882).

stock owned, in all dividends declared on the common stock, and to subscribe in like proportion for any increase of the capital stock.

3. In event of the dissolution of the corporation, to share in proportion to the amount of stock owned in any assets remaining after the corporate debts and obligations have been paid.

4. To inspect the corporate books and accounts.

These rights are discussed in detail in the sections which follow.

§ 60. (1) Voting.

Unless expressly denied in some way, every stockholder, whether his stock be common, preferred or special, has the right to participate in and vote at all meetings of stockholders. (See §§ 90, 91.) Usually he is entitled to cast one vote on all matters passed upon at stockholders' meetings for each share of stock standing in his name upon the books of the corporation,—a right secured to him in a majority of the states by express statute provision. In other states the right, if desired, should be definitely set forth and secured by proper provision in the charter or by-laws. If this is not done, the common law prevails, under which every stockholder is entitled to one vote on all matters passed upon by the stockholders, regardless of the amount of stock he holds.[3]

If the statutes make no provision as to voting, the matter may be regulated by either charter or by-laws. In some few states, as in Washington and Maine, the statutes expressly authorize such regulation by the by-laws. In others, as in Connecticut, Delaware, New Jersey and Nevada, the statutes provide the method that shall be followed in voting unless otherwise prescribed by charter or by-laws.

[3] Commonwealth v. Dalzell, 152 Pa. St. 217 (1893); Taylor v. Griswold, 14 N. J. L. 222 (1834).

The statutes usually prescribe that voting at elections of directors shall be by ballot. Where no special method of voting is prescribed by statutes, charter or by-laws, it may be by call of roll, by ballot, or by any other method that will properly and legally indicate the sense of the meeting. If all are agreed, it is always permissible to instruct the secretary to cast the single ballot of the meeting for the election of specified candidates for directors, or for or against any other measure properly before the meeting.

As between the corporation and its members, the right to vote and usually also the number of votes a stockholder is entitled to cast is determined by the stock books of the corporation.[4] The possession or non-possession of a stock certificate is immaterial. (See §§ 31, 33, 34, 36, 91.)

The right to vote by proxy is generally given by express provision of either the statutes or by-laws, though in some states the right is secured by constitutional provision. It did not exist at common law.[5] (See § 85.)

Trustees may vote upon the stock held in their names as trustees. An executor or administrator may vote upon the stock belonging to the estate even though standing in the name of the deceased party. In the absence of disagreement, any partner may vote stock standing in the partnership name. A corporation holding stock of another corporation may vote such stock through duly authorized agents. A receiver usually votes stock in his possession. When stock is held jointly or in common, as in the case of a partnership or where there are two or more trustees or executors, all must agree on the vote or otherwise it will be lost.[6]

The right to vote carries with it the right to be notified

[4] Commonwealth v. Dalzell, 152 Pa. St. 217 (1893); State v. Ferris, 42 Conn. 560 (1875); *In re* Argus Printing Co., 1 N. D. 434 (1891).

[5] Taylor v. Griswold, 14 N. J. L. 222 (1834); Philips v. Wickham, 1 Paige (N. Y.) 590 (1829); Commonwealth v. Bringhurst, 103 Pa. St. 134 (1883).

[6] Tunis v. Hestonville, etc. Co., 149 Pa. St. 70 (1892); Hey v. Dolphin, 92 Hun (N. Y.) 230 (1895).

of all special meetings,[7] and of all regular meetings if so prescribed. (See §§ 80, 97.)

§ 61. (2) Dividends and Participation Rights.

Save when affected by the issue of some preferred or other special stock, each stockholder has the right to share in dividends with the other stockholders of his corporation proportionately to the number of shares of stock he holds, and there must be no discrimination of any kind in the declaration or the payment of these dividends. (See § § 169, 171.)

Holders of preferred stock, unless otherwise expressly provided, are entitled in any year to payment of their preferred dividends before any dividends are paid the common stock, and thereafter, as soon as the common stock has received an equal dividend, to participate equally with the common stock in any further dividends declared in that year.[8]

If the capital stock of a corporation is increased, each stockholder has the right to subscribe for the new stock proportionately to his holding of the old outstanding stock.[9] Thus if he holds ten per cent. of the outstanding stock and the capital stock is increased, he has the privilege of subscribing for ten per cent. of the new stock. This rule applies to any actual increase of stock, but not to a sale of treasury stock, nor usually to stock which is part of the original capitalization but which has not yet been issued.[10] If, however, this unissued stock has been held for a considerable period of time and is then issued, the stockholders should all have an equal opportunity to subscribe therefor.[11] Holders of preferred stock have the

[7] People v. Batchelor, 22 N. Y. 128 (1860); *In re* St. Helen Mill Co., 3 Sawy. 88 (1874); Wiggin v. First, etc. Church, 8 Metc. (Mass.) 301 (1844).
[8] Boardman v. Lake Shore, etc. R. R. Co., 84 N. Y. 157 (1881).
[9] Way v. Am. Grease Co., 60 N. J. Eq. 263 (1900); Electric Co. v. Edison, etc. Co., 200 Pa. St. 516 (1901); Stokes v. Cont. Trust Co., 185 N. Y. 285 (1906).
[10] Crosby v. Stratton, 68 Pac. Rep. 130 (1902); State v. Smith, 48 Vt. 266 (1876).
[11] Electric Co. v. Edison El. Co., 200 Pa. St. 516 (1901).

same rights of subscription as do holders of common stock, unless expressly denied them by the provisions which created the preferred stock.

The right of subscription is sometimes of considerable value as where a new issue of stock is authorized at a fixed price and this price advances before the day of sale

§ 62. (3) Distribution of Assets on Dissolution.

Each stockholder is entitled to share equally in any distribution of the assets of the corporation, whether on final distribution or on some partial intermediate distribution. Under whatever proceedings a corporation is dissolved, the general rule holds that all corporate obligations and the expenses of the proceedings must first be discharged, and that any remaining assets must be distributed among the stockholders, the same rules applying as to equality of payment, of time and of kind, as in the case of dividends.[12] (See § 179.)

In the absence of any express provision to the contrary, common and preferred stock share alike in the distribution of assets.[13] If by its terms preferred stock takes precedence, it must first receive any assets available for distribution up to its full face value. The common stock then receives any remaining assets up to its full face value. If any balance of assets still remains, both common and preferred stock participate therein alike, unless otherwise expressly provided.

§ 63. (4) Inspection of Books.

Under the common law every stockholder had the right to inspect the books and accounts of the corporation in person or by agent and to make abstracts or copies therefrom without restriction, save that the examination be

[12] Mason v. Pewabic Min. Co., 133 U. S. 50 (1889); 2 Cook on Corp., § 641.
[13] Coltrane v. Building Assn., 110 Fed. Rep. 281 (1901); McGregor v. Ins. Co., 33 N. J. Eq. 181 (1880).

made at a reasonable time and for a proper purpose. By modern statutory regulations and judicial decisions, the right has been much curtailed,[14] until it is now in many states but little more than nominal.

In these states a stockholder desiring to examine the books of account or the records of his corporation must, if refused, secure an order of court for such examination, which will only be granted when he shows some good reason therefor.[15] This reason must be substantial and must be for the specific purpose of investigating some matter concerning the management of the corporation in which his rights as a stockholder are or may be affected injuriously.[16]

This restriction of the right is not unreasonable. It is obvious that it would be impracticable in a large modern corporation with its multitude of scattered stockholders, to allow these to come in at any time and make an examination of the books. The interference with the regular business would in itself be intolerable, but beyond this the right might be so used in the interest of business competitors as to render it destructive of the interests of the stockholders at large.

In some states statutes have been passed which somewhat enlarge the stockholders' usual right to examine the corporate records, and in a few states the right has been considerably extended. In most of the states there is a statutory right to inspect the stock and transfer books,[17] though in New Jersey the courts hold that even this right cannot be enforced unless the stockholder can show some reason for his inspection "germane to his status as a stockholder."[18] In many of the states a statutory penalty is imposed on the corporate officers who refuse a stockholder the right of inspection prescribed by the statutes. In such cases the stockholders' rights are not difficult of enforcement.[19]

[14] Ranger v. Champion Cotton Press Co., 51 Fed. 61 (1892); Chable v. Nicaragua Canal Construction Co., 59 Fed. 846 (1894); Huylar v. Cragin Cattle Co., 40 N. J. Eq. 392 (1895); People v. Eadie, 63 Hun. 320; Aff'd, 133 N. Y. 573 (1892); Matter of Steinway, 159 N. Y. 250 (1899); Cincinnati Volksblatt Co. v. Hoffmeister, 62 O. St. 189 (1900).

[15] Paine v. Warren, 33 Fed. Rep. 357 (1888); Ranger v. Champion Cotton Press Co., 51 Fed. Rep. 61 (1892); Varney v. Baker, 194 Mass. 239 (1907); Kuhbach v. Irving, etc. Co., 220 Pa. St. 427 (1908).

[16] Phoenix Iron Co. v. Commonwealth, 113 Pa. St. 563 (1886); Sage v. Lake Shore, etc. R. R. Co., 70 N. Y. 220 (1877).

[17] Lozier v. Saratoga, etc. Co., 59 App. Div. (N. Y.) 390 (1901); Lewis v. Brainerd, 53 Vt. 519 (1881).

Where the right to examine the corporate records exists, it includes the right to make copies and abstracts.[20] It also includes the right to be accompanied by the party's attorney or expert accountant, or the inspection may be delegated to one or both of these.[21]

§ 64. Special Charter Rights.

In many states special provisions "for the regulation of the business and the conduct of the affairs of the corporation" may be inserted in the corporate charter. Where this privilege exists, rights not usually belonging to the stockholders of a corporation may be thereby secured. Thus, stock may be classified so as to give the minority stockholders unusual voting powers; minority representation may be insured by cumulative voting; the right to examine books may be defined and extended; the right to be present at directors' meetings may be given; it may be provided that profits when they exist shall be declared as dividends at regular intervals, or the power of the directors to pay salaries, contract debts, sell corporate property, and the like, may be restricted.

It should be noted that special provisions incorporated in the charter are difficult of repeal or amendment. For this reason only those which are expressly desired to be permanent should be made the subject of charter provision. Less important provisions are better included in

[18] State v. National Biscuit Co., 54 Atl. 241 (1903).

[19] Lozier v. Saratoga, etc. Co., 59 App. Div. (N. Y.) 390 (1901); Lewis v. Brainerd, 53 Vt. 519 (1881).

[20] Cincinnati Volksblatt Co. v. Hoffmeister, 62 O. St. 189 (1900); Martin v. W. J. Johnston Co., 62 Hun 557 (1891); *Contra* Commonwealth v. Empire, etc. Ry. Co., 134 Pa. St. 237 (1890).

[21] People v. Nassau Ferry Co., 86 Hun 128 (1895); Foster v. White, 86 Ala. 467 (1888); Ellsworth v. Dorwart, 95 Iowa 108 (1895).

the by-laws, where they may be changed when necessary with less formality.

§ 65. Statutory Rights.

In most of the states the usual common law rights of stockholders—discussed in the preceding sections—have been re-enacted in the statutes. In many states the statutes give the stockholders additional rights. Thus, in New York, Kansas, North Dakota and a number of other states, stockholders may call for prescribed statements and reports from the corporate officials. In California and Washington they may inspect mines owned by the corporation. In Connecticut any stockholder may apply for a mandamus to compel the corporation to obey the statutes. In Delaware any stockholder may demand a statement of amounts paid on capital stock and the amount of stock issued. In a number of states meetings for election of directors may be compelled by following prescribed procedure. Provisions as to inspection of books are common and go beyond the common law rights.

(b) Powers of Stockholders.

§ 66. Individual and Collective Powers.

The individual stockholder, no matter how large his holding, has no power as a stockholder to interfere in the lawful management of the company or its business.[22] If the directors take, or are about to take any illegal or wrongful action, he may restrain them by appeal to the courts. If, however, the action taken or about to be taken is in itself not unlawful but merely objectionable to him, his only recourse is to induce, if he can, a majority of the stockholders to act with him in a duly assembled stockholders' meeting, when the by-laws may be amended or such other remedial steps be taken as may be possible.

[22] Demarest v. Spiral, etc. Tube Co., 71 N. J. L. 14 (1904).

The collective powers of the stockholders apply to but few matters and may be summarized as follows:

1. Amendment of charter.
2. Adoption, repeal or amendment of by-laws.
3. Election of directors.
4. Sale of entire assets.
5. Dissolution of corporation.
6. Exercise of any special charter powers.

§ 67. (1) To Amend Charter.

A charter is a contract between the state and the stockholders of the particular corporation, and the assent of both the state and these stockholders is a prerequisite to its amendment. As the charter is also a contract between the corporation and its stockholders, the unanimous vote of all the stockholders is required for its amendment unless otherwise prescribed by statute.[1]

In most of the states such statutes exist providing that the charter may be added to or amended, usually in certain prescribed details or matters, by the action of a specified proportion of the stockholders ranging upward from a bare majority to three-fourths of the outstanding stock. (See § 12.)

§ 68. (2) To Adopt, Repeal or Amend By-laws.

The adoption or amendment of by-laws is one of the common law powers of the stockholders. (See § § 19, 23.) If no provision is made otherwise, the power to adopt, amend and repeal by-laws rests with the stockholders alone,[2] who must, to exercise this power, be duly assembled in a meeting at which such action can be lawfully taken.[3] If the charter or by-laws do not otherwise prescribe, the by-laws may be adopted, amended or repealed at any regular

[1] Hope, etc. Ins. Co. v. Beckmann, 47 Mo. 93 (1870); Marietta, etc. R. R. v. Elliott, 10 O. St. 57 (1859); Mercantile, etc. Co. v. Kneal, 51 Minn. 263 (1892).
[2] Angel & Ames on Corp., § 327.
[3] North, etc. Co. v. Bishop, 103 Wis. 492 (1899).

meeting of the stockholders or at any special meeting where such proposed action has been duly announced. There is some question whether by-laws may be adopted or amended without previous notice at the annual meeting held in accordance with statutory requirements, unless the charter or by-laws expressly so provide.[4]

If the power to adopt by-laws is delegated to the directors (See § 119), this does not, unless expressly so stated, confer on them the exclusive right to make by-laws nor empower them to repeal by-laws enacted by the stockholders.[5] (See Ch. III, "By-laws.")

§ 69. (3) To Elect Directors.

The election of directors is one of the common law powers of stockholders which has been re-enacted in the statutes of most of the states. In all corporations for profit the power exists without specific statutory authority.[6] (See § 90.)

In the absence of other provision, the stockholders have the right to fill vacancies in the board of directors. Ordinarily, however, either by statute or by-law provision this power is given to the board. (See § 111.)

§ 70. (4) To Sell Entire Assets.

A solvent corporation can only sell its entire assets by the unanimous consent of all its stockholders.[7] Where, however, a corporation is financially involved or likely to become so, the sale of all its property may be made in any manner that will secure a fair return, by authorization of a

[4] Dill on N. J. Corp., p. 27; Smith v. Nelson, 18 Vt. 511 (1846); Kent v. Quicksilver Mining Co., 78 N. Y. 159 (1879); Bagley v. Reno, etc. Co., 201 Pa. St. 78 (1902).

[5] Heintzelman v. Druids' Relief Assoc., 38 Minn. 138 (1888); Stevens v. Davison, 18 Gratt. (Va.) 819 (1868); Commonwealth v. Gill, 3 Whart. (Pa.) 228 (1838); Alters v. Journeymen, etc. Assoc., 19 Pa. Super. Ct. 272 (1902).

[6] *Re* Union Ins. Co., 22 Wend. 591 (1840); *In re* Long Island R. R. Co., 19 Wend. 37 (1837).

[7] Abbot v. American Hard Rubber Co., 33 Barb. 578 (1861); People v. Ballard, 134 N. Y. 269 (1892); Eldred v. American Palace Car Co., 96 Fed. Rep. 59 (1899); 99 Fed. Rep. 168 (1900).

majority of the stockholders.[8] Also if the statutes or charter so provide, the entire assets of a corporation may be sold by action of a majority of the stockholders, or by majority action of the directors, the prescribed formalities being duly observed.[9]

§ 71. (5) To Dissolve the Corporation.

"It is an unquestioned rule that all the stockholders, by unanimous consent, may effect a dissolution of the corporation by the surrender of the corporate franchises."[10] Where the corporation is insolvent or is in danger of becoming insolvent, and is unable to further conduct its corporate business, a majority of the stockholders may effect its dissolution. This is the extent of the power of the stockholders under the common law.[11]

Statutory provisions, however, exist in a majority of the states prescribing procedure whereby dissolution may be had by action of a stated majority of the stockholders. (See § 179.)

§ 72. (6) Special Powers.

In many states special powers are conferred upon the stockholders by express statutory provision. Thus in Kentucky, Maine and some other states, it is provided that corporations may merge or consolidate with others upon the consent of a prescribed majority of the outstanding stock, usually with a provision for the appraisement and purchase of the stock of any dissenting stockholder. In New York, Pennsylvania and some other states it is provided that any mortgage of corporate property must be

[8] Sewell v. East, etc. Co., 50 N. J. Eq. 717 (1893); Skinner v. Smith, 134 N. Y. 240 (1892); Hayden v. Official Hotel Red-Book, etc. Co., 42 Fed. Rep. 875 (1890).

[9] Republican, etc. Mines v. Brown, 58 Fed. Rep. 644 (1893); St. Louis v. St. Louis, etc. Co., 70 Mo. 69 (1879); Peabody v. Westerly Waterworks, 20 R. I. 176 (1897); Mumford v. Ecuador, etc. Co., 111 Fed. Rep. 639 (1901).

[10] 2 Cook on Corp., § 629; Denike v. N. Y., etc. Co., 80 N. Y. 599 (1880); Houston v. Jefferson College, 63 Pa. St. 428 (1869).

[11] Berry v. Broach, 65 Miss. 450 (1888); Price v. Holcomb, 89 Iowa 123 (1893).

authorized by a vote of the stockholders. In several states, as California and Montana, directors may be removed by a two-thirds vote of the entire stock. In the states where special provisions may be inserted in the charter, as in New York, Delaware and South Dakota, it is possible to extend the powers of stockholders far beyond their usual scope. (See §§ 14, 64.)

CHAPTER IX.

LIABILITIES OF STOCKHOLDERS.

§ 73. Liabilities of Subscribers to Stock.

"The public, in dealing with a corporation, assumes that its actual capital in money or money's worth, is equal to the capital stock which it purports to have, unless it is impaired by business losses,"[1] and those who credit the corporation have a right to assume that if this is not the case, any difference between the amount of capital actually paid in and the par value of its issued stock will be made up as far as necessary to meet corporate liabilities. In other words, those dealing with a corporation are justified in assuming that a dollar's worth of cash or property has been contributed to the corporation or will be contributed if the necessity arises, for every dollar of its stock outstanding. This is a broad statement of the claim which corporate creditors have upon stockholders.

While the assumption on the part of the public of the value represented by stock has often but little basis in fact, it is the foundation for the common law liability of the subscriber, first to the corporation and then to the creditors of the corporation, for any amount unpaid on his subscription.[2] If subscriptions are not paid according to their terms, or when subscriptions are unconditional as calls are made by the directors, the corporation may either bring suit to collect unpaid amounts, obtain judgment and

[1] 1 Cook on Corp., §199.
[2] Hollins v. Brierfield, etc. Co., 150 U. S. 371 (1893).

levy on the stock if necessary,[3] or, where the statutes give such power, may forfeit the delinquent stock. If the corporation does neither, the liability of the stockholder on his unpaid stock still remains for the benefit of creditors of the corporation. (As to transfers of unpaid stock, see §§ 48, 74.)

When the statutory forfeiture of stock for unpaid calls is enforced in good faith, a stockholder who is thus deprived of his stock is released from further liability to the corporation and its creditors.[4] When stock is so forfeited, it is necessary to observe the prescribed statutory formalities carefully, as otherwise the proceedings may be set aside and the corporation be liable in damages.[5]

An important difference must be noted here between the stockholder's liability to the corporation and to the corporate creditors. The corporation may, if it desires, sell stock to subscribers at less than par, and, if it does so with the agreement that such payment shall be payment in full, the agreement will stand as to the corporation, and, upon payment of the agreed amount, the subscriber's obligations to the corporation are at an end. The corporate creditors, however, who are not parties to the agreement, are not estopped thereby but may proceed against the stockholder for the difference between the amount he has paid on his stock and its full par value, and the agreement with the corporation is no defense.

As a rule, corporate creditors must first proceed against the corporation for the collection of their claims. If they secure judgment against the corporation and are unable to collect from it, they may then proceed against any stockholder who has not paid in full for his stock.[6] If, however, the corporation has been dissolved or is notoriously insolvent, creditors may proceed directly against the stockholders of the corporation.[7] If the corporation goes into the hands of an assignee, a receiver, or a trustee in bankruptcy, it is the duty of that official to collect all unpaid subscriptions.[8]

[3] Nashua Bank v. Anglo-Am. Co., 189 U. S. 221 (1903); Upton v. Tribilcock, 91 U. S. 45 (1875).
[4] Mills v. Stewart, 41 N. Y. 384 (1869); Germantown, etc. Co. v. Fitler, 60 Pa. St. 124 (1869).
[5] Lewey's Island R. R. Co. v. Bolton, 48 Me. 451 (1860).
[6] Wetherbee v. Baker, 35 N. J. Eq. 501 (1882).

The fact that other stockholders have not paid their subscriptions does not avail a stockholder as a defense against payment of his own subscription. Nor has he any claim against these other subscribers. When, however, payment of his subscription is enforced by corporate creditors, the conditions are different. A corporate creditor need not, as a rule, proceed against or join all the stockholders whose subscriptions are unpaid but may collect from any one or more of them up to the full amount due on their stock if his claim amounts to so much. In such case, as the corporate debts are a joint obligation to be borne by all the delinquent stockholders in proportion to the amounts due on their stock, any subscribers who are compelled to pay more than their due proportion can compel contribution from other delinquent stockholders up to their proportion of the debts paid.[9]

Where corporate property has been purchased with stock, the stock issued therefor is usually supposed and intended to be full-paid. If, however, there has been unfair dealing or such overvaluation of the property as to be fraudulent, the stock might be held but partly paid and in case of insolvency there would then be a liability to the corporate creditors for the amount still due.[10] (See "Full-paid Stock." § 29; also "Exchange of Property for Stock," Ch. XXVI.)

An exception to the general rule that a corporation may not sell its stock below par on original issue without

[7] New Lamp Chimney Co. v. Brass Co., 91 U. S. 656 (1875); Terry v. Tubman, 92 U. S. 156 (1875).
[8] In re Crystal Spring Co., 96 Fed. 945 (1899); Scovill v. Thayer, 105 U. S. 143 (1881).
[9] 3 Thomp. Corp., § 3816.
[10] For full discussion of issuance of stock for property, see Conyngton on Corp. Organization, pp. 204-225.

involving liabilities to subscribers, is found when a corporation is financially embarrassed and in danger of becoming insolvent. If it still has unissued stock it may then sell this stock for any price reasonably possible and the purchasers incur no obligation for the unpaid portion.

It may be noted that the payment of commissions on the sale of stock when reasonable is not held to constitute a sale of stock below par, even though the net proceeds are thereby diminished to less than the par value of the stock.[11]

§ 74. Liabilities of Purchasers of Stock.

Stock issued direct by the corporation is termed an original issue as distinguished from stock transferred thereafter from one stockholder to another or taken from the treasury stock of the corporation itself. If such outstanding stock is purchased in good faith with the understanding or express statement that is is full-paid, and particularly when the certificates are so marked, the purchaser does not incur any liability either to the corporation or its creditors even though the subscription price or the par value of such stock has not been paid in to the corporation. In any such case the unpaid liability on the stock either remains with the transferrer or is lost.[12] (See § 48.)

When, however, a purchaser takes unpaid stock with a knowledge of the conditions, the liability for any call already made, even though the payment date of such call has not yet arrived, remains with the transferrer, but the transferee is liable for any subsequent calls.[13]

The general rule is, however, modified by statute in many of the states. Thus in Oregon and Tennessee the liability on unpaid stock remains with the transferrer,

[11] Arapahoe, etc., Co. v. Stevens, 13 Colo. 534 (1889); Zabel v. New State, etc. Co., 86 N. W. Rep. (Mich.) 949 (1901).
[12] West Nashville, etc. Co. v. Bank, 86 Tenn. 252 (1888); Brant v. Ehlen, 59 Md. 1 (1882); Rood v. Whorton, 67 Fed. 434 (1895).
[13] Boulton Carbon Co. v. Mills, 78 Iowa 460 (1889); 5 L. R. A. 649; Webster v. Upton, 91 U. S. 65 (1875).

while in Kentucky it continues with the transferrer for two years from the date of transfer, and in Maine and Mississippi for one year. In Wisconsin the liability may be shifted to the transferee with the consent of the corporation but the liability of the seller continues notwithstanding for six months after the transfer. In Nebraska the liability follows the unpaid stock. In Illinois both transferrer and transferee are liable.

The common law liability of holders of unpaid stock for any unpaid portion of its par value is confirmed by statute in most states of the Union. In a few states this common law liability has been extended, and in a number of states additional liabilities are imposed. These subsequent or additional liabilities extend to all stockholders, whether their stock is full-paid or otherwise.

Thus in California stockholders are liable in proportion to their stock interests, for all debts of the corporation. In Minnesota a double liability is imposed, save as to stockholders of manufacturing and mechanical corporations. In Arizona stockholders are liable for all debts of the corporation unless expressly otherwise provided in the charter of the corporation. In Wisconsin stockholders are liable for all debts of the corporation until one-half the capital stock is subscribed and twenty per cent. has been paid in. In Nebraska a double liability is imposed if the incorporation is defective or if the annual report of indebtedness is not made. The stockholders of a New Hampshire corporation are liable for all the corporate debts until its capital stock has been paid in full and has been duly certified. In Massachusetts, New York, Pennsylvania, Indiana and a number of other states, stockholders are liable for corporate debts for labor performed, or for amounts due employees of the corporation. In Wisconsin a double liability exists for certain labor claims. In several states the statutes expressly provide that the lia-

bilities of a stockholder may be extended by proper provision in the charter of the corporation.

On the other hand, in some few states special exemptions are found, as in Delaware, New Jersey, Indiana and New Mexico, where, regardless of whether it is full-paid or otherwise, preferred stock is exempt from all claims of corporate creditors; or in Ohio where preferred stock is liable only after the liability of common stock has been exhausted; or in Tennessee where preferred stock is not liable for corporate debts unless it has the voting power; or in Michigan where preferred stockholders are exempt from personal liability for all corporate debts save for labor performed. In New Mexico common stock may be exempted from the usual liabilities by proper procedure.

Statutory liabilities pertaining to irregularities of incorporation are treated of in the section which follows.

§ 75. Liabilities of Stockholders as Partners.

In every state of the Union the procedure for the formation of a corporation is prescribed, and, if this procedure is duly followed and the charter is granted by the proper authorities, the corporation comes into being with every right and privilege of a corporation. Also if an honest effort has been made to comply with the law, minor omissions, failures or irregularities will not invalidate the incorporation.[14] Even when material errors omissions or failures occur in the observance of the prescribed formalities, the usual effect is the formation of a *de facto* corporation, liable at the suit of the state to be deprived of its right to do business as a corporation, but, until this is done, having every corporate right and privilege,[15] and its stockholders having only the usual liabilities of stockholders.

[14] 1 Cook on Corp., § 234.
[15] Swartout v. Railroad Co., 24 Mich. 389 (1872); Harris v. Land Co., 128 Ala. 652 (1900); Cooley on Const. Limitations, § 309.

When, however, there is some essential irregularity or failure, as for instance if there is no legal authority for the formation of a corporation such as was purposed, or if the filing of the prescribed charter or articles of association was omitted, there is not even a *de facto* corporation and the parties engaged may be held liable as partners, and this applies to those entering after organization of the corporation as well as to those originally involved.[16]

Also in a number of the states, by express statutory provision, defects in observance of the statutory procedure for incorporation, or failure to observe the requirements of the laws relating to corporations thereafter, render the stockholders of such corporations liable as partners. Thus stockholders are liable in Iowa as partners if the incorporation has been irregular, and in Florida if the incorporation has been irregular or incomplete. In Illinois, also, the stockholders are liable as partners if the provisions of the law are not complied with, and in Maine they are liable for the corporate debts in case of failure or fraud in observance of the corporation laws. In a few states liabilities follow if some specific act is not performed, as in Louisiana and Idaho where the stockholders are liable as partners unless the word "Limited" follows the corporate name in all advertising matter, on signs, etc., while in Nebraska a double liability is imposed if the incorporation is defective or if the annual report of corporate indebtedness is not made as prescribed.

Where stockholders of a corporation reside in another state or when a corporation is formed in one state to do business in another, the stockholders usually incur only such liabilities as are prescribed in the state of incorporation. If, however, a company is incorporated in one state to carry on in another state business of a nature not allowed to corporations organized in that other state, the

[16] Montgomery v. Forbes, 148 Mass. 249 (1889); Eaton v. Walker, 76 Mich. 579 (1889); Jones v. Hardware Co., 21 Colo. 263 (1895).

parties engaged may be held liable as partners.[17] Also corporations organized in one state to conduct businesses in other states which they are not authorized to carry on in the state of incorporation, as to build railroads or do a banking business, are sometimes held to be merely partnerships in these other jurisdictions.[18]

§ 76. Assessment Liability.

"It is a principle of law, coeval with the existence of corporations having a capital stock, that, unless the corporate charter or a constitutional statute provides otherwise, a stockholder, the full par value of whose stock has been paid in, is not liable and cannot be made to pay any sums in addition thereto. The mere legislative act of creating a corporation produces by implication this limited liability of its members."[19]

This exemption from liability of stockholders whose stock is full-paid is, however, subject to modification, as stated, either by statute provision or, as to the corporation. by charter provision. Accordingly we find the power of levying assessments is given by the statutes in a number of states. Thus in California and Idaho assessments may be made by the directors for the purpose of paying expenses, conducting the business or paying debts. The same provision exists in North and South Dakota. In Colorado mining and irrigation companies may, under certain circumstances, assess full-paid stock. In Montana full-paid stock may be made liable to assessments by charter provision, or the charter may expressly exempt it, but in such case the provision for non-assessment may be changed by three-fourths' written consent of the stockholders.

Where power of assessment of full-paid stock is given

[17] Empire Mills v. Alston Grocery Co., 15 S. W. Rep. (Texas) 200, 505 (1891).
[18] Land Grant Ry. v. Commissioners, 6 Kans. 245 (1870).
[19] 1 Cook on Corp., §241; United States v. Stanford, 161 U. S. 412 (1896).

the directors, any assessed amount is merely a liability of the stock, not extending to other property of the parties who hold the assessed stock. If the assessments are not paid, the defaulting stock may be forfeited by prescribed statutory procedure, but this ends the matter.

§ 77. Liability for Disbursements from Capital.

The capital of a corporation is considered a fund held for the protection of the corporate creditors and therefore not to be distributed in any way among the stockholders save on dissolution of the corporation, and then only in accordance with the provisions of the law. For this reason dividends can lawfully be declared only from surplus profits.

In New York and some other states, the declaration of any dividend which impairs the capital stock is made a penal offense. In almost every state of the Union such dividends are illegal and corporate creditors may reclaim them from stockholders to whom they are paid. In like manner stockholders are liable to the corporate creditors for any assets of the corporation received by them in any way, save as a dividend from profits.[20] There is no such liability for dividends declared from profits, even though the company afterward becomes insolvent.[21] (See Ch. XX.)

[20] Finn v. Brown, 142 U. S. 56 (1891); Hastings v. Drew, 76 N. Y. 9 (1879); Bartlett v. Drew, 57 N. Y. 587 (1874).
[21] Reid v. Mfg. Co., 40 Ga. 98 (1869).

CHAPTER X.

ANNUAL MEETING OF STOCKHOLDERS.

§ 78. The Annual Meeting.

The annual meeting of stockholders is prescribed by statute in most states, and elsewhere is required by the charter or by-laws of the corporation. It is the only usual regular meeting of stockholders. If other meetings are necessary, they are "special meetings," called as required.

Stockholders' meetings must be held within the state of incorporation. In many states the statutes so provide. Elsewhere it is a matter of common law,[1] save in some few instances, as in Delaware, West Virginia and Arizona, where the statutes expressly provide that stockholders' meetings may be held out of the state. The principal office of the company within the state is the customary and most appropriate place for stockholders' meetings and in many states is the place designated by statute.

The by-laws usually prescribe the details of the annual meeting, such as the time and place, the notice required, the number necessary to constitute a quorum, the time of closing books, the officers of the meeting and the order of business. By-law provisions also usually regulate the use of proxies, method of casting votes and the employment of inspectors or tellers at elections of directors.

[1] Ormsby v. Vermont Mining Co., 56 N. Y. 623 (1874).

Whenever there is any probability of the proceedings of the annual meeting being attacked or when there are any disputes or differences of opinion among the stockholders of a corporation, every formality in connection with the annual meeting should be carefully observed. Under other circumstances such close observance, though always advisable, is not so essential. If the proceedings are characterized by good faith and are a fair expression of the sense of those present, "mere irregularities in the manner of conducting the business are immaterial."[2]

§ 79. Closing Transfer Books.

The corporate calendar (See § 153; Form 198) should show the exact date prior to the annual meeting on which the transfer books are to be closed to transfers. (See § 37.) The object in thus closing the books is to obviate any uncertainty as to who is entitled to receive notice of and to vote at the annual meeting.

§ 80. Notice of Annual Meeting.

Notice of the annual meeting is usually prescribed by the by-laws and in some few states is required by statute. Such notice is not, however, of the same vital importance as in the case of special meetings, since the time and place of the annual meeting are specified in the by-laws and are supposed to be familiar to the stockholders. For this reason, failure to send out notice of its time and place as required by the by-laws, while a very serious breach of duty on the part of the secretary, is not ordinarily held to invalidate the proceedings of the meeting, save as to any unusual or specially important business considered thereat.[3]

The notice of the annual meeting should not only

[2] 2 Cook on Corp, § 606.
[3] 1 Morawetz, § 482; Warner v. Mower, 11 Vt. 385 (1839); Sampson v. Steam Mill, 36 Me. 78 (1853).

specify its time and place but also its objects. This is not always legally necessary but is an advisable precaution, particularly when business of special importance is to be considered thereat. "Where unusual business is to be transacted even at a regular meeting, the notice of that meeting should state the unusual business."[4] In Pennsylvania it has even been held that important amendments of the by-laws cannot be legally effected at the annual meeting unless previously notified to the stockholders.[5] In the larger corporations the by-laws frequently provide specifically that any failure or irregularity in the notice of the annual meeting shall not affect its validity or the validity of any of its proceedings.

Written notice of the annual meeting mailed to the stockholders of record is usually prescribed. This notice should be signed with the official signature of the secretary or other corporate officer authorized thereto,[6] and should be mailed, postage paid, on the date specified in the by-laws—which ranges widely from five to sixty days or more before the date of the meeting—to the address of each stockholder as shown by the books of the company. (See Forms 55-59.) A copy of the notice with date of sending endorsed thereon, should be preserved by the secretary as evidence that proper notice of the meeting has been given.

Publication of the notice of annual meeting is in some states required by statute, and is customary in all states among the larger corporations. It is, however, a most uncertain and inadequate method of notification and should only be used in connection with notice by mail. Copies of the papers in which the publication notice appears should be preserved by the secretary as proof of due publication, or, if preferred, a copy of the notice may be made and an affidavit of the publisher or of the secretary cer-

[4] 2 Cook on Corp., § 595.
[5] Bagley v. Reno, 201 Pa. St. 78 (1902).
[6] Johnston v. Jones, 23 N. J. Eq. 216 (1872).

tifying to its due publication be attached. (See § 87; also Forms 165-167.)

The notice of the annual meeting usually states the dates for the closing and reopening of the transfer books.

§ 81. Preparations for Annual Meeting.

It is the secretary's duty to see that all stationery, blanks and materials and any of the corporate books or documents in his keeping that may be needed at the meeting, are at hand or readily accessible at the proper time. His preparations will also usually include,—

(1) *Order of Business.* Unless the presiding officer is very familiar with the regular order of business as given in the by-laws of the company, a copy should be prepared by the secretary in convenient form for reference and be handed to the chairman at or before the time he takes charge of the meeting. (See Form 24, By-laws, Art. II.)

The object of the formal order of business is to insure the systematic and orderly conduct of meetings and of the business of such meetings. The order prescribed is, however, directory, not mandatory as are most of the by-law regulations, and may therefore be suspended at any meeting in whole or in part, either by a majority vote of those present or by their mere assent.[7]

(2) *List of Stockholders.* Under the laws of New Jersey and some other states, an alphabetical list of the stockholders entitled to vote at the annual meeting must be prepared by the secretary, be presented at the meeting and be kept there for the inspection of any stockholder. The requirement is a reasonable one, and a similar list will be found a convenience in any state. Its preparation is frequently made a by-law requirement.

This list of stockholders is made out from the stock books after they are closed to transfers, and gives the

[7] Matter of Wheeler, 2 Abb. Pr. (N. S.) 361 (1866); Matter of Mohawk, etc. R. R. Co., 19 Wend. 135 (1838).

names and addresses of the stockholders and the amount of stock held by each. It must be remembered, however, that the company's stock books are the final authority in any such matters and should be at hand for reference in case the accuracy of the list is impugned.[8]

In the smaller corporations the secretary will in addition find an alphabetical list of the stockholders of much convenience for his own use. This list should be arranged with columns in which may be noted those present in person or by proxy, those absent and the amount of stock held by each. (See Form 99.)

(3) *Outline Minutes.* These will be found convenient for the use of the secretary. Properly prepared, they cover all routine business so that a few short pencil notes will usually dispose of these matters, leaving the secretary free to attend to any new or special business that may demand his services. (See Form 100.)

§ 82. Officers of Meetings.

No fixed rule prevails as to officers of stockholders' meetings. The regular officers of the company usually serve, but not unless authorized thereto by the charter or by-laws. If no such provision exists, the stockholders elect or appoint the officers of their own meetings. As a rule, the secretary so appointed should be the secretary of the company. To appoint a secretary not familiar with the records, the personnel and the general condition of the company is apt to cause delay and confusion and is but seldom advisable.

When the regular officers are designated, the president will take charge of the meeting as a matter of course, or in his absence the vice-president takes the chair. If both are absent, the treasurer might act as presiding officer. If the treasurer is also absent, the secretary might very

[8] Johnston v. Jones, 23 N. J. Eq. 216 (1872); Downing v. Potts, 23 N. J. L. 66 (1851).

properly ask someone present to call the meeting to order, who will then preside until a more permanent chairman is selected, or the secretary might act temporarily himself. If so, he should not preside longer than is necessary for the appointment of a chairman. He cannot act as president and secretary at the same time, and his more important duty is to record the proceedings of the meeting. In the absence of all the regular officers from the meeting, the stockholders appoint a chairman and a secretary *pro tem*, who serve for that meeting.

§ 83. Opening the Meeting.

Usually, as stated, the by-laws provide that the president and secretary of the company shall officiate at stockholders' meetings. In such case, at the appointed time and place the president, or in his absence the next ranking officer present, requests the meeting to come to order. and the secretary, if he has not already done so, furnishes the presiding officer with a copy of the order of business and presents a list of the stockholders of the company which remains open during the meeting for the inspection of those present.

§ 84. Roll-Call.

In the smaller corporations, the presiding officer after calling the meeting to order requests the secretary to call the roll. Practice varies as to the precise manner of roll-call. Usually the secretary employs an alphabetical list prepared for the purpose and, calling the names if he is not personally acquainted with all the stockholders, notes thereon those present either in person or by proxy, and any absentees. (See Form 99.)

In the larger corporations this plan is not practicable. When the list of stockholders runs far up in the hun-

dreds or thousands, an actual call of roll is obviously impossible. Instead, the chairman first requests the stockholders present in person to report to the secretary. As each reports, reference is made to the secretary's list of stockholders, and if the person reporting is found thereon, his name and the amount of stock he holds are recorded. The chairman then calls for those who represent stockholders by proxy. These also report, each giving the name of the stockholder and the number of shares he represents, handing in his proxy or, after exhibiting the original, a certified copy thereof, as evidence of his right to vote. The statements are verified in each case, and the names of both principal and proxy and the stock represented are duly noted. In this way the number of shares represented and entitled to vote at the meeting is arrived at accurately and expeditiously

After the secretary has completed the roll-call or annotation of stockholders present, he announces to the chairman the total number of shares outstanding entitled to vote, the number necessary to constitute a quorum, the number represented at the meeting, in person and by proxy, and, if such is the fact, that they constitute a quorum.

If a quorum is present, the presiding officer announces the fact and states that the meeting will proceed to business. (See § 86.) If a quorum is not present and no other stockholders can be secured, the meeting may take either one of two courses. It may adjourn *sine die*, which defers the election of directors indefinitely and leaves the existing board to hold over until the next annual meeting or until a special meeting is called for the election of directors, or the meeting may adjourn from day to day or, if the charter or by-laws so permit, to any desired future date, when, if a quorum is secured, the meeting may be held. (See § 93.)

The important point to be determined at roll-call is the amount of stock represented. The number of persons present is immaterial. One man, by stock ownership or proxies, or by both, might represent the entire outstanding stock of the company and such meeting, if properly conducted, is legal in this country.[9] In England it has been held that one person cannot hold a meeting.[10] In either country, however, the party in control could avoid all question and satisfy every requirement by giving proxies for one or more shares of stock to convenient parties and allowing the parties thus qualified to participate with him in the meeting.

§ 85. Proxies.

A proxy is a special power of attorney executed by a stockholder of the corporation and authorizing some specified person to represent him at one or more stockholders' meetings of that corporation. A party who holds and exercises the powers of a proxy is said to act as a proxy. Any person competent to act as an agent may act as a proxy.[11] (See Ch. XXX, "Forms of Proxies.")

The right to vote by proxy is not a common law right.[12] It cannot therefore be exercised unless conferred either by constitutional provision as is the case in some states, by statute provision as is the case in many states, or otherwise by charter or by-law provisions.

In the majority of states the statutes prescribe that voting at stockholders' meetings may either be in person or by proxy. In some states the statutes are merely permissive, allowing voting by proxy if provision therefor is made by charter or by-laws. Variations or restrictions

[9] Morrill v. Little Falls Mfg. Co., 53 Minn. 371 (1893); see note 21 L. R. A. 174.
[10] Sharpe v. Dawes, 2 Q. B. D. 26 (1876); *in re* Sanitary Carbon Co., 12 W. N. 223 (1877).
[11] People's Bank v. Superior Court, 104 Cal. 649 (1894); *Re* Lighthall Mfg. Co., 47 Hun 258 (1888).
[12] Philips v. Wickham, 1 Paige 590 (1829

of the usual right to vote by proxy are found in many states. Thus in New Hampshire no person may vote as proxy, or as principal and proxy, for shares exceeding one-eighth of the whole capital stock. In Maine, a general power of attorney authorizing the voting of stock is good until it expires or is revoked, but a proxy must have been executed within thirty days preceding the day of meeting. In Pennsylvania a proxy must have been executed within two months of the date of meeting; in Massachusetts within six months; in New York, California and Connecticut within eleven months; in Minnesota within one year; in New Jersey, Delaware, North Carolina and Porto Rico within three years, and in New Mexico within five years.

The original, or a duplicate or certified copy of every proxy should be filed with the secretary of the meeting at which the powers conferred by the proxy are to be exercised, and should be preserved by him in case the validity of the meeting or any of its proceedings should be questioned. If the proxy is a continuing one, it should be filed at the first meeting at which its powers are exercised but need not be filed at subsequent meetings.

§ 86. Quorum.

A quorum at stockholders' meetings is the number of shares of stock which must be represented—or the number of members which must be present—to duly constitute the meeting and enable the legal transaction of business. In some of the states the statutes provide that at least a majority of the outstanding stock must be present in order to constitute a quorum. Elsewhere a similar provision is usually inserted in the charter or by-laws of the particular corporation. If no regulating provisions exist, the common law prevails, under which those present at a duly assembled stockholders' meeting are entitled to act, no

matter whether they represent a majority of the outstanding stock or otherwise. "The law is clear that those stockholders who attend a duly called stockholders' meeting may transact the business of that meeting, although a majority in interest or in number of the stockholders are not present."[13]

In the absence of conflicting statutes, the stock necessary to constitute a quorum may be fixed at any amount desired. The usual and best practice requires a majority of all the outstanding stock. A smaller quorum is sometimes prescribed but is not always safe. A majority of a legal quorum may always act. Hence if less than a majority constitutes a quorum, it is entirely possible that matters of the greatest importance to the corporation will be decided by less than one-fourth of the outstanding stock.

It may be noted that the statutes of a few states—New York among them—reaffirm the common law as to a quorum in the case of meetings for the election of directors.[14] In these states the stockholders, meeting at the duly appointed time and place for the election of directors, have power to act regardless of the amount of stock they represent.[15]

§ 87. Proof of Notice.

After the presence of a quorum has been ascertained, the secretary, in response to a request from the chair, should submit proof that due notice of the meeting has been given. For this purpose a copy of the notice should be exhibited with the secretary's certificate as to its due service attached. If greater formality is desired, the secretary's certificate might appear in the form of an affi-

[13] 2 Cook on Corp., § 607.
[14] Stock Corp. Law (N. Y.), § 20.
[15] Matter of Rapid Transit Ferry, 15 App. Div. (N. Y.) 530 (1897).

davit. When less formality is deemed sufficient, the secretary merely presents a copy of the notice with a verbal statement that it has been sent out as required by the by-laws. (See Forms 165-167.)

If notice by publication has been given, the secretary should exhibit copies of the papers containing the notice, or copies of the notice with the affidavit of the publisher or of the secretary himself as to its publication. If the formality of an affidavit is deemed unnecessary, the secretary's certification, or even his mere statement, as to the facts of publication will usually suffice.

§ 88. Reading of Minutes.

The presiding officer next calls for the reading of any unapproved minutes. The secretary in response reads the minutes of the annual meeting held the preceding year, also the minutes of any special meeting or meetings of the stockholders held during the year. Occasionally it will happen that the reading of the minutes at the preceding annual meeting has been passed or the minutes of preceding meetings have not been approved at such meeting, and the secretary will then go back still further, presenting all minutes of stockholders' meetings that have not theretofore been read and approved.

At the close of the reading of each set of minutes or, if preferred, at the close of the reading of all unapproved minutes, the chairman may announce: "If there are no objections, the minutes as read will stand approved;" or a motion may be passed that "the minutes be approved as read."

If errors are discovered, the minutes may be corrected at once or when the reading of the particular minutes is concluded, or at any time previous to their approval. If the errors are obvious or immaterial, the presiding officer may, in the absence of objection, merely direct the secretary to make the corrections. If there is any question as to an alleged error or if the matters are important, the correction of the minutes is best effected by motion. If the motion prevails, the minutes must be amended accordingly and are then "approved as corrected," usually by order of the president or chairman; otherwise by formal motion.

The minutes of an annual or special meeting cannot be approved at a special meeting of stockholders unless so specified in the call for such meeting. Minutes of a directors' meeting are never read at a stockholders' meeting, except for purposes of information or to obtain the stockholders' ratification of acts recorded in the minutes. (See Chs. XIX, XXXIII.)

The reading of the minutes may be dispensed with, if desired, either by formal motion, or, in the absence of objection, by mere announcement of the chairman.

§ 89. Annual Reports.

Under the usual order of business the annual reports of officers and committees follow the reading of minutes. The president's report is the first official report to be presented. Following this usually comes the treasurer's report, and if other officers have reports to make or if the board of directors or any committees have reports to submit, they are in order at this time. (See Forms 115-117.)

Before a report presented at the annual meeting is formally received, it is discussed if necessary and any desired questions asked and answered concerning it. A motion is then made that the report be received and filed, or otherwise disposed of as may be necessary, or, in the absence of objection, its proper disposition may be effected by order of the chairman. If any report proves to be incomplete, erroneous, or otherwise objectionable, a motion may be made to return such report for correction or for

revision, or it might even be rejected absolutely, such rejection serving as an emphatic rebuke to the official or committee by whom the report was made.

As reports are ordered received, the secretary, unless it is expressly otherwise ordered, takes charge of and preserves them for future reference. Reports of special importance are sometimes ordered spread upon the minutes, or entered in the minute book immediately following the minutes of the meeting.

§ 90. Election of Directors.

In the larger corporations the annual election of directors is the most important event in the corporate calendar, deciding the management and the general policy of the company for the ensuing year. (See §§ 69, 110.) In small or close corporations, on the other hand, the election of directors is frequently omitted, the directors then in office holding over for another year or until their successors are elected. There is no legal objection to this practice when all the stockholders acquiesce. (See § 112.)

Voting for election of directors should be by ballot. In perhaps the majority of the states the statutes require this method to be followed. The election is usually conducted by inspectors or tellers, in some states as a matter of statutory requirement; elsewhere as a matter of by-law provision or merely of convenience. These inspectors or tellers, usually two in number, may be stockholders or otherwise, as seems best to the meeting, but candidates who are to be voted upon at the election should not be appointed. The inspectors take entire charge of the election. At its close they announce the results, or, otherwise, hand their report to the chairman of the meeting, who reads the results from the inspectors' report. The report is then handed to the secretary for preservation or for such other disposition as may be prescribed. (See Forms 101-106.)

In the larger corporations the formalities of an election of directors are usually strictly observed. In the smaller corporations such elections are frequently conducted very informally. Where there is entire agreement, the board is sometimes selected by conference, and the secretary—authorized thereto by motion—casts the single ballot of the meeting for the parties named.

Unless otherwise provided by statute or the charter or by-laws of the corporation, a majority of the votes cast at an election of directors held at a duly constituted meeting elects,[16] even though these are not a majority in interest of all those present at the meeting. In other words, stockholders who do not vote cannot have their votes counted in the negative.[17] The charter or by-laws may, however, in the absence of any conflicting statutes, modify this rule by providing that the votes of a majority of those present at the meeting, or of a majority or any other desired proportion of the outstanding stock, shall be necessary to elect.

If less than the full number of directors to be elected receive the majority or plurality vote necessary to elect, those receiving the required majority or plurality vote are elected and another ballot or another election may be held to elect the remainder.[18] It may be noted that unless the statutes, charter or by-laws provide that a plurality of votes elect, a majority of all the votes cast is necessary to an election.[19] After the ballot has been counted or announced, it is too late to receive additional votes.

§ 91. Voting at Elections.

If the statutes do not prescribe the method of voting

[16] 2 Cook on Corp., § 608.
[17] State v. Green, 37 O. St. 227 (1881); Smith v. Proctor, 130 N. Y. 319 (1891).
[18] Wright v. Commonwealth, 109 Pa. St. 560 (1885); Matter of Union Ins. Co., 22 Wend. (N. Y.) 591 (1840).
[19] 1 Thompson on Corp., § 775; 2 Cook on Corp., § 608.

at elections of directors, it may be by any desired method that will fairly indicate the will of those entitled to vote. (See § 60.)

The stock books of the corporation which show the transfer and ownership of stock are in most states the final and decisive evidence as to who is entitled to vote at corporate elections. (See §§ 35, 36, 60.) If the corporation keeps no other stock book than a stock certificate book, this will be sufficient if it shows the stock transfers and ownership. A stockholder cannot be kept from voting on account of the loss or absence of his stock certificate (See § 41), nor can he be denied the voting right because his stock is not fully paid, unless it is expressly so provided by the statutes of the state or the charter of the corporation.[20] (See § 58.) A by-law provision restricting the voting right is not ordinarily effective. A corporation cannot vote on its own stock, whether held in the name of the corporation or a trustee for the corporation. Any sale or issue of stock made by the directors to control an election can usually be stopped by injunction or the courts may be invoked to set the election aside.

The inspectors, tellers or other officers conducting an election have no authority to refuse the vote of any stockholder of record, nor the right to receive the vote of any one who is not a stockholder of record. Even when grounds for so doing exist, the courts alone can go behind the corporate records and enjoin stockholders of record from voting, or set aside an election carried by the vote of such stock. The secretary or chairman of the meeting has no authority to decide who may vote, the matter resting with the tellers or other persons conducting the election, who must be governed by the stock books of the corporation.

Under the general rule in regard to voting at elec-

[20] Downing v. Potts, 23 N. J. L. 66 (1851); People v. Albany, etc. R. R., 55 Barb. 344, 386 (1869); Am., etc. Co. v. State Board, 56 N. J. L. 389 (1894).

tions, a stockholder is entitled to one vote for each director to be elected, for each share of stock standing in his name on the books of the corporation.[21] (See § 60.) If there are any variations of this usual rule, such as cumulative voting, classified voting, or restriction of voting to one class of stock, such variation should be stated as clearly as possible in the charter or by-laws of the corporation and must, as a matter of course, conform to the requirements of any state statutes on the subject.

Cumulative Voting. The usual method of voting for directors results in the election of the entire board of directors by those holding a majority of the stock. The cumulative system of voting is a modification of this usual method whereby representation on the board may be secured by the minority. Under it, while each share still has as many votes as there are directors to be elected, and these votes may be cast one for each candidate as before, all of these votes, if so desired, may be cast for one candidate or may be divided among any or all of the candidates as the stockholder sees fit. Thus if five directors are to be elected, a stockholder owning one share of stock may, under the cumulative system, cast one vote for each of five candidates but, if he prefers, may cast five votes for one candidate, or two votes for one and three for another, or divide his five votes among the candidates in any other way he sees fit.

The practical result of this modification of the usual system is to ensure minority representation whenever the minority holding of stock is at all material. Thus if a corporation has one hundred shares of stock outstanding and five directors are to be elected, a stockholder owning or controlling forty-nine shares of this stock would not under the usual system be able to elect a single director. Under the cumulative system he could infallibly elect two

[21] 2 Cook on Corp., § 609; State v. White, 42 Conn. 560 (1875).

directors. Or if he controlled but thirty-four shares, he could still elect the same number of directors. If he controlled but seventeen shares he would still be able to elect one member of the board.

The calculation is simple. As each stockholder is entitled to one vote on each of his shares for each of the five directors to be elected, this gives him five votes for each share held, or eighty-five votes for his seventeen shares. The remaining stock—eighty-three shares—if under one control, gives a total of four hundred and fifteen votes opposed. If then the eighty-five votes of the minority stockholder are cast for one candidate, no possible combination of the opposing four hundred and fifteen votes can defeat him.

In a number of states cumulative voting is prescribed either by the constitution or statutes. In many other states the statutes permit it but leave its adoption optional with the corporation. In any state where the statutes are not directly or indirectly prohibitive, cumulative voting may be secured by proper provision in the charter or by-laws of the corporation.

Under the system of cumulative voting, it is never possible for the minority stockholders to control, provided the majority act together intelligently. It may be said, however, that when it is employed the majority should understand its workings, or otherwise unexpected results may ensue. If the majority scatter their votes, while a strong minority combine, it would be entirely within the realm of possibility for this minority to gain control of the board.

The board representation secured to the minority interests by cumulative voting is a very material advantage, enabling them to keep in touch with the operations of the company and informed as to any proposed action of the board. The minority cannot interfere with or prevent any proper action, but if these actions are objectionable

to them, they are informed in advance and may use such restraining influence as they can. If improper actions are proposed, they may prevent them by legal interference.

§ 92. Other Business.

The consideration of any unfinished business follows the election of directors. This includes any matters which were under consideration but not disposed of at any prior stockholders' meetings, whether regular or special. Matters referred to committees for consideration, or investigation, or report come under this head and may be acted upon at this time.

The secretary usually brings up any matters of unfinished business but the stockholders or the chairman himself may properly call them to the attention of the meeting.

If there is no unfinished business or, otherwise, upon its disposal, the presiding officer passes on to the next order of business and enquires if there is any new business to be brought before the meeting. Under this head come any matters requiring the attention of the meeting not before considered. These may be brought up either by the officials of the meeting or by any of the stockholders present.

§ 93. Adjournment.

After the disposal of any new business brought before the meeting, adjournment is in order. This may be by motion. Usually, however, when this point is reached the chairman enquires if there is any other business before the meeting, and if no response is received, declares the meeting adjourned. Such adjournment is *sine die*, i. e. final.

If the business of the meeting cannot be completed at

the one session, or if any other reasons render its continuation desirable, it is not adjourned *sine die*, but to such convenient future date as may be decided upon. An adjournment of this kind is usually by motion, but if it is obviously desirable or advisable, the chairman might properly adjourn the meeting himself, merely announcing: "If there is no objection, the meeting stands adjourned until ————————."

Adjournment may only be made by consent of a majority of those present, and the chairman has no power to declare a meeting adjourned in defiance of this majority. If he does so notwithstanding, any stockholder may demand a vote, and, if this vote is against adjournment or if the chairman should decline to put the matter to vote. a majority of the stockholders may remain and continue the meeting, electing a new chairman if necessary, and even adjourning to another room.[22]

If the meeting adjourns, the adjourned meeting is regarded as a continuation of the original meeting and need not therefore be again notified to the stockholders. If the adjournment is for more than a few days, however, it is always proper for the secretary to send out notice of the adjourned meeting a reasonable time before it convenes.

As an adjourned meeting is, from a legal standpoint, merely a continuation of the original meeting, the same officers preside and any business that might have been transacted at the first meeting may be acted upon at its adjournment, or at any adjournment from an adjourned meeting.[23]

§ 94. Signing Minutes.

As soon after the meeting as convenient and while its

[22] State v. Cronan, 23 Nev. 437 (1897).
[23] People v. Batchelor, 22 N. Y. 128 (1860); People's Bank v. Superior Court, 104 Cal. 649 (1894).

details are fresh in his mind, the secretary should write up its proceedings in the minute book and sign them with his name and official designation. The presiding officer, also, usually affixes his signature.

The minutes are the legal evidence of the proceedings of the meeting, and this double signature is of advantage in event of any dispute as to the accuracy of the record. (See Ch. XXXIII, "Minutes of Corporate Meetings.")

CHAPTER XI.

STOCKHOLDERS' SPECIAL MEETINGS.

§ 95. Special Meetings of Stockholders.

"Special" or "called" meetings are held when matters demanding the attention of the stockholders arise in the interim between annual meetings. As in the case of annual meetings, special meetings of stockholders must be held within the state in which the corporation was organized, unless otherwise expressly permitted by statute or charter provision, and usually at the principal office of the corporation. Statutory provisions regarding special meetings are found in a number of states. These mainly relate to the method of calling or notifying such meetings.

Special meetings differ from the annual meeting in the following important details: (1) They must be authorized by a more or less formal call. (2) Notice of the time, of the place and of all business to be transacted at the meeting must be given each stockholder of record. (3) No other business save that so notified may be transacted at the meeting.

The formalities of special meetings must be strictly observed, or action taken thereat may be invalidated. They may, however, be waived by consent of every interested party, either formally expressed in writing, or indicated by their presence at and participation or acquiescence in the meeting. (See §§ 96, 98; also Forms 32, 33, 39.)

§ 96. Call for Meeting.

The time and place of special meetings cannot, from the nature of the case, be prescribed by the by-laws and hence each meeting must be formally called as the necessity arises. The manner of this call is sometimes prescribed by statute or charter but is usually left for the by-laws. If neither the statutes, charter nor by-laws prescribe the manner of calling special meetings of stockholders, the directors may always do so by resolution,[1] or the stockholders may unite in calling a meeting, which, provided the number joining in the call represents a fair proportion of the outstanding stock and the time and place is reasonable, will be legal. (See Form 47.)

Ordinarily the by-laws provide that special meetings may be called in any one of four ways: (1) By written call signed by the president (See Forms 40, 41); (2) by resolution of the directors (See Form 44); (3) by written call signed by two or more directors (See Forms 42, 43); (4) by written or published call subscribed by a specified number of stockholders, or a certain proportion of the outstanding stock, usually ranging from one-third to a majority. (See Forms 45-47.)

The call and notice for a special meeting must state its time, place and purpose.[2] These essentials every stockholder is entitled to know, and the omission of any one might invalidate the entire action of the meeting. *No business except that which has been specified in the call and in the notice which follows the call, can be legally transacted at a special meeting.*[3] To end the call or notice, as is frequently done, with some general phrase, such as "and all other matters that may come before such meeting," does not add to the scope of the meeting in any way and does

[1] Commonwealth v. Smith, 45 Pa. St. 59 (1863); Stebbins v. Merritt, 64 Mass. 27 (1852); Cassell v. Lexington, etc. Co., 9 S. W. Rep. 502 (1888).
[2] 2 Cook on Corp., § 595.
[3] Clark & Marshall on Corp., § 647.

not in itself legally authorize the consideration of anything.[4]

Where a company with but few stockholders is to be assembled in special meeting, time may be saved by employment of the combined call and waiver of notice. (See Form 39). This requires the signature of every stockholder to make it effective, but the meeting so authorized may be held at once, and, if so agreed, any business within the powers of the stockholders may be transacted thereat. A provision in a duly signed call and waiver for the "transaction at such meeting of any and all business pertaining to the affairs of the company," is effective, since everyone interested has agreed thereto.[5] (See § 98; also Ch. XXVIII, "Calls and Waivers.")

The first meeting of stockholders is merely a form of special meeting and is usually assembled by call and waiver signed by all those entitled to be present. (See Forms 32, 33.)

§ 97. Notice of Special Meeting.

The call for a special meeting must not be confused with the notice of such a meeting. The call is the written authority or instructions, usually handed or sent to the secretary, pursuant to which the meeting is to be assembled. (See Forms 40-47.) The notice, on the other hand, is the actual statement of the time, place and purposes of the meeting, sent out to the stockholders usually by the secretary, in obedience to the instructions of the call and in accordance with its terms. (See Forms 52-54.)

The notice of a special meeting must state the three essential elements of time, place and purpose.[6] These must accord with the specifications of the call. If there is

[4] 1 Morawetz on Corp., § 482; People's Ins. Co. v. Westcott, 80 Mass. 440 (1860).
[5] Cook on Corp., § 599.
[6] 1 Morawetz on Corp., § 482.

any material difference as to these between the call and the notice, the meeting is invalidated thereby. The time means both the day and the hour. No business other than that specified in the notice may be transacted at a special meeting. (See § 100.) If one single stockholder is not properly notified, he may be able to set the entire proceedings of the meeting aside.

When, as is usually the case, notice of a special meeting must be sent by mail to the "last known address" of each stockholder, or to his "address as it appears on the books of the corporation," the secretary must be prepared to make affidavit, if necessary, that this has been done. If no special method of service or publication is prescribed by the statutes, the by-laws or other corporate regulation, the secretary must himself or by deputy give personal notice by placing a copy of the notice in the hands of each stockholder.[7] If no time is prescribed, notice must be served a "reasonable time before the meeting."[8] When notice is required to be given a certain number of days before the meeting, the time should be counted exclusive of the day of notice and the day of meeting, though in New York by statute provision but one of these days need be excluded.

If the secretary refuses to give proper notice of a special meeting after it has been duly called, anyone interested may send out the notice, and such notice, if in due form and properly served on each stockholder, will be effectual.

§ 98. Consent Meetings.

Special meetings of stockholders may be assembled at any time without the usual call and notice if all interested

[7] Stebbins *et al.*, Admrs. v. Merritt *et al.*, 64 Mass. 27 (1852); Tuttle v. Mich. Air Line R. R. Co., 35 Mich. 247 (1877).
[8] *Re* Long Island Railroad, 19 Wend. 37 (1837); Covert v. Rogers, 38 Mich. 363 (1878).

sign a formal waiver thereof.[9] Also, if without any such waiver, all the stockholders assemble in meeting, no matter how called or whether called at all, it is termed a "consent meeting," and, all present acquiescing, any business within the stockholders' powers may be transacted thereat.[10] Those present and participating in such meeting are thereby estopped from later objection to any informality of call or notice, and as all concerned are present, no one is left who has a right to object.

When consent meetings are held, it is important that the minutes shall show the presence of every stockholder. Also if the action taken is important, it is always advisable that every person present shall either sign the minutes, which is the most effective evidence of attendance and acquiescence, or otherwise sign a waiver of the usual formalities. (See Form 49.)

In a small or close corporation consent meetings can readily be assembled and are the rule when special meetings are necessary. In the larger corporations such meetings are in most cases obviously impossible.

§ 99. Opening Formalities.

The procedure for opening a special meeting is the same as in the case of the annual meeting. (See §§ 83, 84.) The alphabetical list of stockholders required by statute in some of the states at the annual meeting of stockholders, is not required at special meetings unless directors are to be elected.

The proof of proper call and notice of the meeting follows the roll-call. The secretary should present the original duly signed call; also a copy of the notice sent out pursuant to the call, with his certificate attached showing

[9] 3 Clark & Marshall on Corp., § 647, note 278.
[10] Handley v. Stutz, 139 U. S. 417 (1890); Warner v. Mower, 11 Vt. 385 (1839); Columbia Nat. Bank v. Mathews, 85 Fed. Rep. 934 (1898); *In re* Griffing Iron Co., 53 N. J. L. 168 (1898); Aff'd 63 N. J. L. 357 (1899).

that the notice was properly addressed and mailed to each stockholder the necessary number of days before the date of the meeting. The call and notice may be ordered received and filed as in the case of a regular meeting, or, as the validity of the meeting is dependent upon its due assembling evidenced by the call and notice, they may very properly be ordered spread upon the minutes.

If the meeting has been assembled by call and waiver signed by all the stockholders of the company, this instrument should be presented to the meeting and may be properly included by the secretary in his minutes without instruction.

§ 100. Special Business.

Minutes of previous stockholders' meetings cannot properly be approved at a special meeting unless so provided in the call and notice or other authorization of the meeting, nor can any other business be transacted save that so specified.[11] Hence the particular business for which the meeting was called should be taken up at once. The presiding officer, or at his request someone present, states the purposes of the meeting and makes such explanations as may be necessary. Or the presiding officer may call upon the secretary to read the notice of the meeting in which its purposes are set forth and then call upon someone familiar with the matter to explain it to the stockholders. After such statement and explanation and any desired discussion, someone interested usually presents and moves the adoption of a resolution covering the matter. The meeting may then, at its discretion, dispose of this resolution in any parliamentary way.

[11] Warner v. Mower, 11 Vt. 385 (1839); People's Mut. Ins. Co. v. Westcott, 80 Mass. 440 (1860); Atlantic De Laine Co. v. Mason, 5 R. L. 463 (1858); Mutual, etc. Co. v. Farquhar, 86 Md. 668 (1898).

§ 101. Adjournment.

As already stated, no business of any kind may be transacted at a special meeting save that specifically authorized. As soon, therefore, as the particular business for which the meeting was called is disposed of, nothing is left but adjournment. This may be by motion, or, if no one objects, the president may merely state that "no further business being before the meeting, it stands adjourned."

A special meeting may be adjourned to another day just as may an annual meeting, and at the adjourned meeting any business set forth in the notice for the original meeting may be considered. New business cannot, however, be introduced or considered. No notice of an adjourned meeting is necessarily sent to stockholders. (See § 93.)

PART IV.—DIRECTORS AND OFFICERS.

CHAPTER XII.

THE BOARD AND ITS MEMBERSHIP.

§. 102. Functions and Action of the Board.

The board of directors is the managing body of the corporation. Unless otherwise expressly provided by charter or by-law provision, it has the entire management and control of the corporate property and affairs.[1] It acts through agents, who are usually the officers of the corporation.

In exercising its appointed powers, the directors must act as a board in duly assembled meeting with a quorum present,[2] and their action is expressed by means of motions and resolutions, which, though differing in form, are of the same legal effect. (See Ch. XXXI.)

§ 103. Action Without Meeting.

It is only as a body in lawful meeting assembled that the directors have authority to act and bind the corporation.[3] The separate assent of every one of the directors to a measure is of no legal force. It frequently happens, however, that important corporate action is authorized by mere informal conference between members of the board, or at times by written agreement signed by all or a majority of

[1] Ellerman v. Chicago, etc. Co., 49 N. J. Eq. 217 (1891); Sellers v. Greer, 172 Ill. 549 (1898).
[2] Johnston v. Jones, 23 N. J. Eq. 216 (1872).
[3] *In re* St. Helen Mill Co., 3 Sawy. 92 (1874); Gashwiler v. Willis, 33 Cal. 11 (1867).

the members of the board. Such authorization is in itself absolutely ineffective,[4] though it may be ratified at any subsequent duly assembled directors' meeting, and then becomes the lawful action of the board.

In Nevada, by express statute provision, action by a majority of the directors without a legally called meeting, is valid if afterwards assented to in writing by all the other members of the board.

§ 104. Number.

The statutes usually impose general limitations as to the number of members constituting the board of directors. The exact membership within these limits must, in a majority of the states, be fixed by charter provision; elsewhere by the by-laws. In many of the states the statutes merely prescribe a minimum number of directors, ranging from two, as in Washington, up to five, as in Illinois, Ohio, Tennessee, and the Philippines. The most common minimum is three. Maximum limitations are also found in many states, ranging from nine, as in South Carolina, to thirty, as in Ohio. In West Virginia a fixed board of five members is prescribed unless otherwise provided by the by-laws. In a few states no statute provisions as to number are found, the whole matter being left to the discretion of the incorporators or stockholders as the case may be. An odd number is usually selected, as three, seven or thirteen, in order to avoid tie votes.

To change the number of directors is usually a matter of difficulty, requiring an amendment of the charter. In some of the states, however, the number is fixed by the by-laws, and may be changed by their mere amendment. When the membership of the board is increased in the interim between annual meetings, the stockholders elect the

[4] Peirce v. Morse-Oliver, etc. Co. 94 Me. 406 (1900); People's Bank v. St. Anthony's, etc. Church, 109 N. Y. 512 (1888).

additional members to hold for the balance of the year, unless otherwise expressly provided by statutes, charter, or stockholders' by-laws.[5]

§ 105. Qualifications.

The only qualification required of a director under the common law is the ability to act as an agent. Additional qualifications are, however, frequently imposed, either by the statutes of the state, or by the charter or by-laws of the corporation. The statutory requirements almost invariably relate to residence or to the holding of stock by directors. Charter and by-law provisions usually relate to the amount of stock that must be held.

§ 106. Residential Qualifications.

Residential qualifications for directors are imposed in perhaps the majority of the states of the Union. Commonly one member must be a resident of the state of incorporation; in the Philippines and Vermont, two must be residents; in Kansas and Missouri, three; in Pennsylvania and Oklahoma, one-third of the total number; while in California, Ohio, and Alaska, a majority of the board must be residents. In Indiana all, and in Washington a majority of the directors must be citizens of the United States.

It may be said that there is some doubt as to whether any of the statutory requirements as to residence of directors are of legal force.[6] The directors act as agents or trustees of the stockholders, and it is questionable whether the state can restrict the stockholders' choice by imposing residential requirements.

§ 107. Stockholding Qualifications.

In most of the states the statutes expressly prescribe

[5] *In re* Griffing Iron Co., 63 N. J. L. 168 (1899).
[6] 2 Cook on Corp., § 623; Farmers' L. & T. Co. v. Chicago, etc. Ry., 27 Fed. Rep. 146 (1886); Shirk v. City of La Fayette, 52 Feb. Rep. 857 (1892); Roby, Trustee v. Smith *et al.*, 131 Ind. 342 (1891).

that directors shall be stockholders. In some few states a minimum holding is prescribed, but usually the ownership of a single share of stock is sufficient.

In New Jersey and some few other states, a director must hold stock of the corporation at the time he is elected.[7] As a rule, however, the election of a person not a stockholder is effective if he acquires stock before acting as a director.[8] Where a corporation holds stock of another company, any of its directors or officers may, as its representatives, be elected directors of this other company, though personally owning no stock.[9]

When directors are required to hold stock, and a "dummy" director is to be elected, or some person is desired as a director who does not own the necessary stock, and is not able or does not care to purchase it, the usual plan is to assign to him the requisite amount. Sometimes this assigned stock is given outright in return for the services to be rendered. Frequently, however, this is not desired. In such case a certificate of stock is actually issued to the proposed director, or director-elect, as the case may be, and he is entered on the stock books as a stockholder of record. He is then required, however, to endorse his certificate, usually in blank, and hand it back to the original owner, who then again becomes the owner in fact of the stock it represents. This last certificate is not, however, turned in for cancellation, and so long as this condition continues the director is technically the owner of the stock, and is qualified to act.[10] If, however, the real owner of the stock surrenders the endorsed certificate, the stock it represents is credited to him on the corporate books, and a new certificate is issued in his name. This terminates the technical ownership of stock by the "dummy" director, and *ipso facto* his directorship. Wherever directors are required to be stockholders the transfer of a director's stock on the books of the company terminates his *de jure* directorship.[11]

[7] *Re* St. Lawrence Steamboat Co., 44 N. J. L. 529 (1882).
[8] Greenough v. Ala., etc. R. R. Co., 64 Fed. Rep. 22 (1894).
[9] Wight v. Springfield, etc. R. R., 117 Mass. 226 (1875).
[10] *Re* St. Lawrence Steamboat Co., 44 N. J. L. 529 (1882); *Re* Leslie, 58 N. J. L. 609 (1896); *In re* Argus Printing Co., 1 N. D. 434 (1891).

When the first directors are named in the certificate of incorporation, as in New York, North Dakota, Montana, and a number of other states, these first directors need not be stockholders, even though the statutes prescribe a stock-holding qualification.[12]

§ 108. Compensation of Directors.

Unless otherwise provided in the charter or by-laws, directors are not entitled to compensation for their services as directors. They are supposed to be working for the general welfare of the corporation, and not in expectation of receiving personal compensation.[13] This is a matter of common law, re-enacted by the statutes in several of the states. In Colorado a director is not entitled to compensation for services as such, unless such compensation is expressly provided for or sanctioned by the charter.[14] Even where a director performs services outside of those ordinarily pertaining to the position, the tendency of the courts is to hold, in the absence of express agreement otherwise, that they are undertaken through zeal for the company's welfare rather than through expectation of direct remuneration.[15]

While directors do not usually receive any salary or compensation for their services, an inducement for attendance at meetings is commonly offered by the larger corporations in the shape of a director's fee or allowance, prescribed by the by-laws and usually ranging from five

[11] Chemical Nat. Bank v. Colwell, 132 N. Y. 250 (1892); Beardsley v. Johnson *et al.*, 121 N. Y. 224 (1890).
[12] Hamilton Trust Co. v. Clemes, 163 N. Y. 423 (1900); Camden, etc. Trust Co. v. Burlington, etc. Co., 33 Atl. Rep. 479 (1895).
[13] Farmers', etc. Trust Co. v. R. R., 152 N. Y. 251, 254 (1897); Mather v. E. M. Co., 118 N. Y. 629, 632 (1890).
[14] Brown v. R. M. S. Mines, 17 Colo. 421 (1892).
[15] Stout v. Security Co., 82 App. Div. (N. Y.) 129 (1903).

to twenty dollars for each meeting. This is not earned unless the director is present at the meeting, and it is sometimes prescribed that he must be present "from roll-call until adjournment, unless sooner excused."

The whole matter of directors' compensation for their services as directors is one resting in the discretion of the stockholders, and if they deem any fee or compensation desirable, it should be provided for in the stockholders' by-laws. Where, however, services clearly outside those pertaining to his position, are rendered by a director he should be paid. This is best provided for in the by-laws, but, if not, the board should enter into an express agreement for such services, and the compensation therefor, before the services are rendered. It is doubtful whether the board can legally allow compensation to a director who is also a stockholder, for services already rendered.[16] If the director is not a stockholder the rule does not apply. (See § 120.)

[16] Brophy v. Am. Brewing Co., 211 Pa. St. 596 (1905); Klein v. Ind. Brewing Assn., 231 Ill. 594 (1908).

CHAPTER XIII.

ELECTION AND REMOVAL OF DIRECTORS.

§ 109. Appointment of Directors.

Directors are usually elected each year by the stockholders at their annual meeting. (See § 90.) In some few states, as in Colorado and Maine, this annual election of directors is a matter of statutory requirement. In most of the states it is merely a matter of custom, which may be regulated by the by-laws as the stockholders see fit. The effect of a longer term is sometimes secured by mere omission of the annual election, the old directors then holding over until their duly qualified successors are elected. (See § 112.) If the time and place of election of directors is not prescribed by the charter or statutes, the by-laws should make proper provision therefor.

In some of the states the first directors are named in the charter, and their appointment is made effective by the allowance of that instrument. (See § 107.) In the other states the first board of directors is usually elected by the incorporators at their first meeting. Every statutory requirement should be followed exactly in this first election, and the minutes should show in detail that this has been done. (See Form 37.)

Speaking generally, irregularities in procedure at an election of directors, unless material, will not be sufficient ground for setting the election aside, provided it has been

conducted in good faith and more regular procedure would not have changed the result.[1]

§ 110. Classification of Directors.

In order to prevent any sudden change of management, the board of directors is sometimes divided into classes, one class being elected each year. Such classification is seldom necessary when cumulative voting (See § 60) prevails, as this in itself tends to prevent sudden and radical changes of management. It is also rarely advisable in the smaller corporations.

The usual classification of directors is their division into three as nearly equal classes as possible, each class holding for three years, and one class being elected each year. Under this plan three years is required for a complete change of the board membership. The three classes are provided for at the first election of directors on any agreed plan—as, for instance, that of the directors elected those receiving the highest number of votes shall constitute the first class with a three years' term; those receiving the next highest number of votes shall constitute the second class with two years of their term to run, and those receiving the lowest votes shall constitute the third class, with one year of their term yet to run.

Classification of directors is expressly permitted by statute in a number of the states. It may, however, be obtained by proper charter or by-law provision in every state of the Union, save in those few where the statutes provide for the annual election of the entire board.

§ 111. Vacancies on the Board.

The stockholders alone have power to fill vacancies on the board, unless otherwise expressly provided by statute,

[1] *Re* Argus Printing Co., 1 N. D. 434 (1891); *Re* Mohawk, etc. R. R., 19 Wend. 135 (1838); Union, etc. Bank v. Scott, 53 N. Y. App. Div. 65 (1900).

charter or by-laws. Such vacancies must therefore await the election of directors at the next annual meeting, or be filled by special election, unless the power of filling vacancies has been conferred upon the board.[2] It is advisable that the directors have this power, and in practice it is almost invariably given them.

Vacancies on the board may be caused by the death, removal, resignation, or disability of a director, or the failure of a director-elect to accept his office.[3] The continued absence of a director from meetings is not itself sufficient to vacate his position. If it is desired that such continued absence shall have this effect, the by-laws should so provide, specifying the exact number of consecutive absences from regular meetings or from regular and special meetings necessary to create a vacancy.

A board of directors may legally continue to act in spite of vacancies, provided enough remain to make up a quorum of the whole board. Less than a quorum of the board cannot fill vacancies unless expressly so empowered by charter or by-laws. (See Form 24, Art III, § 1.)

§ 112. Directors Holding Over.

"If the directors shall not be elected on the day designated in the by-laws, or by law, the corporation shall not for that reason be dissolved; but every director shall continue to hold his office and discharge his duties until his successor has been elected."[4] This statement of the law taken from the New York statutes is also a statement of the common law, existing in practically every state of the Union.[5] A similar provision also usually appears in the by-laws.

[2] *In re* Griffing Iron Co., 63 N. J. L. 168, 357 (1899); 3 Thompson on Corp., § 3853.
[3] Whittaker v. Amwell Nat. Bank, 52 N. J. Eq. 400 (1894); United Growers Co. v. Eisner, 22 App. Div. (N. Y.) 1 (1897).
[4] Gen. Corp. Law, N. Y., § 23.
[5] State v. Bonnell, 35 Ohio St. 10 (1878); Noble v. Euler, 20 App. Div. (N. Y.) 548 (1897); Manhattan Co. v. Kaldenberg, 165 N. Y. 1 (1900).

The powers of directors who continue in office because of a failure to elect their successors are the same in every respect as before their fixed term of office expired. They are directors both *de jure* and *de facto*, and their acts are valid.[6] (See § 148.)

The smaller corporations relying upon this condition sometimes omit the annual meeting with its election of directors for years, thereby avoiding the formalities of the annual meeting. In such case the old board holds over indefinitely, and, duly empowered thereto by charter or by-laws, fills by vote of its own members any vacancies that may occur. As long as the stockholders do not protest, the practice is not legally objectionable. In New York the omission of the election of directors for eight years has been upheld.[7]

§. 113. Resignation of Directors.

A director is under no obligation to continue in the service of his corporation longer than he desires. Even though the statutes or by-laws provide that he shall continue in office until the end of his term, he may resign at any time and thereby terminate his official position.[8]

The effect of a resignation is governed by its terms. It may be tentative (See Form 135), requiring acceptance by the board before it is effective, or peremptory (See Form 137) and effective as soon as delivered to the proper representative of the corporation.[9]

The resignation should, for purposes of record and proof, be in writing, but an oral resignation properly presented to the board of directors and recorded in the minutes as so presented, is sufficient. It is obvious, however, that an oral resignation is objectionable on account

[6] 2 Cook on Corps, § 713; Kent Co., etc. Soc. v. Houseman, 81 Mich. 609 (1890).
[7] Geneva Mineral Springs v. Coursey, 45 App. Div. (N. Y.) 268, 275 (1899).
[8] 3 Clark & Marshall on Corp., § 667 and cases cited; Fearing v. Glenn, 73 Fed. Rep. 116 (1896); Briggs v. Spaulding, 141 U. S. 132 (1890).
[9] Manhattan Co. v. Kaldenberg, 165 N. Y. 1 (1900); Int. Bank v. Faber, 86 Fed. Rep. 443 (1898); Noble v. Euler, 20 N. Y. App. Div. 548 (1897).

of its difficulty of proof. A peremptory resignation may be made effective at a future date.[10] A tentative resignation may fix a future date on which it will be effective if accepted. (See Form 138.)

A peremptory resignation cannot be withdrawn after its formal presentation to the board, save with the consent of the board. A tentative resignation may be withdrawn at any time before its acceptance.

§ 114. Removal of Directors.

The directors have no power to suspend or remove a fellow member of the board. The stockholders have a common law power to remove directors for adequate cause, but such removals are not frequent. The cause must be good and capable of proof, charges must be preferred, a meeting must be called, and the accused be given a hearing. The whole procedure is troublesome, and it is usually preferable to await the expiration of an offending director's term rather than to attempt his forcible removal sooner.

In some states, however, the statutes extend this common law power of removal, and wherever special provisions are permitted in the charter, the same end may be attained by proper charter provision. When thus given by the statutes or charter, the power of removal is usually summary, i. e., an objectionable director may be removed by prescribed procedure—usually by a two-thirds vote of the stock, but in a few states by a bare majority—at once and with or without cause. Under these circumstances the removal of directors is more frequent.

When the office of director has been usurped or is unlawfully held, and is claimed by a party who is not in possession, *quo warranto* will lie, or an equitable action for possession may be instituted.[11]

[10] Van Amburgh v. Baker, 81 N. Y. 46 (1880).
[11] Powers v. Blue, etc. Assn., 86 Fed. 705 (1898); Commonwealth v. Detwiller, 131 Pa. St. 614 (1890).

CHAPTER XIV.

POWERS AND LIABILITIES OF DIRECTORS.

§ 115. Powers of Directors.

Unless restricted by statute, charter, or by-laws, the board of directors, acting as a board, exercises the active controlling power in all corporate business. "The board of directors and not the stockholders, nor the president, secretary, treasurer, or other agent, is the original and supreme power in corporations to make corporate contracts."[1] They are the embodied power of the corporation, so constituted by the mere fact of their appointment.[2] The stockholders can neither force the directors to act nor restrain them from acting—save by charter or by-law provision—unless the omission in the one case or the act in the other is so glaringly unjust or injurious to the interests of the stockholders as to warrant an appeal to the courts.

The powers of the board do not, however, extend beyond the purposes for which the corporation was formed. Thus the sale of the entire assets, the dissolution of the corporation or a radical change of its business are not within its unsupported power. Also the statutes in the different states restrict in greater or less degree the common law powers of the board. Thus, as a rule, directors are not allowed to issue bonds or to mortgage corporate property unless expressly authorized thereto by the stockholders. Also the absolute authority of the board

[1] 2 Cook on Corp., § 709, 712.
[2] Landers v. Frank St. M. E. Church, 114 N. Y. 626 (1889).

may always be limited by charter or by-law provisions. On the other hand, the powers of directors are sometimes extended by charter or by-law provisions, or by the statutes, in the latter case mainly as to adoption of by-laws. (See § 119.)

The authority of the directors may only be exercised as a board in duly assembled meeting with a quorum present.[3] A single director, as such, has absolutely no authority over the corporate affairs.[4] He may be appointed by the board to manage some feature of the corporate business, or as managing director may practically control the corporate affairs, but in any such case his powers are only those which are delegated to him by the board and are limited strictly by the terms of his appointment.[5]

The powers of the individual director are few. As a knowledge of the corporate affairs is essential to the proper discharge of his duties, he has a right to inspect the records and the property of the corporation and to familiarize himself with its operations.[6] He is also entitled to attend any meeting of the standing committees,[7] to be notified of all special meetings of the board, to attend all board meetings and to be heard, if he so desires, on all matters coming before any such meeting.[8] If he discovers anything wrong in the conduct of the corporate affairs, he has no individual power to right it, but must present the matter to the board for its action.

§ 116. Duties of Directors.

A director of a corporation is virtually a trustee for the body of stockholders, and must exercise the same care

[3] North Hudson, etc. Assn. v. Childs, 82 Wis. 460 (1892); Edgerly v. Emerson, 23 N. H. 555 (1851).
[4] Alabama Nat. Bank v. O'Neil, 128 Ala. 192 (1900); Gaynor v. R. R., 189 Pa. St. 5 (1899).
[5] Clark & Marshall on Corp., § 690.
[6] People v. Throop, 12 Wend. (N. Y.) 183 (1834); Rosenfield v. Einstein, 46 N. J. L. 479 (1884).
[7] Western Ry. v. Rashout, 5 De G. & Sm. 290 (1852).
[8] Metropolitan, etc. Co. v. Domestic, etc. Co., 44 N. J. Eq. 568 (1888); Curtin v. Salmon, etc. Co., 130 Cal. 345 (1900); Broughton v. Jones, 120 Mich. 462 (1899).

and diligence in the conduct of the corporate affairs as a prudent business man would exercise in the conduct of his own affairs.[9] As a trustee, he must have no interest adverse to the interest of the company. (See § 121.)

§ 117. Appointment and Removal of Officers and Agents.

The authority of the board to appoint and remove officers and agents of the corporation is not a common law power, but must be given it by statute, charter or by-law provision. Unless this is done, the power belongs to and may be reserved by the stockholders. (See §§ 143, 149.)

§ 118. Appointment of Committees.

The board has general power to appoint standing committees, to which may be delegated any desired authority up to the full power of the board "in the interim between its meetings." Usually, however, this power of appointment is restated by the charter or by-laws of the corporation, and in some states is confirmed by statute provision. The members of the committee, exercising discretionary powers of the board, should also be members of the board. (See Ch. XVI.)

§ 119. Adoption of By-laws.

Originally the stockholders were supposed to express their wishes as to the management of the corporation through the by-laws, and the directors to exercise their powers in subordination thereto.[10] Of late years, however, in many states the statutes confer more or less extended power to adopt by-laws upon the directors. In some of these states the by-laws adopted by the directors must be either in harmony with the by-laws passed by

[9] Cook on Corp., § 648; Elliott v. Baker, 194 Mass. 518 (1907).
[10] North Milwaukee, etc. Co. v. Bishop, 103 Wis. 492 (1899); Morton, etc. Co. v. Wysong, 51 Ind. 4 (1875).

the stockholders, or subject to their revision, but in some few states the board is given the sole and entire right to adopt by-laws. Also in some other states they are given power to make by-laws for their own government. (See § 19.) When the stockholders have by by-law provision delegated the power of making by-laws to the directors, it has been held that the directors are not thereby authorized to repeal by-laws passed by the stockholders.[11] Unless directors are given independent power to adopt by-laws by statute or charter provision, their by-laws may be repealed or amended at any duly assembled stockholders' meeting. (See Ch. III, "By-Laws.")

§ 120. Directors as Officers.

A director may, in addition to his directorship, hold any other corporate office or offices, provided his official positions are not incompatible with each other. The president as presiding officer of the board is always selected from its membership.

A director when elected as an executive officer of the corporation, is as a matter of course entitled to any salary attached to the office by by-law provision. If the salary was fixed by mere resolution of the board, it should, however, be reaffirmed after the appointment of the director to his office. When the salary of an officer who is also a director is to be fixed by action of the board, the director to whom the salary is to be paid should withdraw from the room while the resolution fixing his salary is adopted. If he remains in the room and participates in the vote fixing his salary, the legality of the action so effected is doubtful.[12] (See §§ 108, 121, 145.)

[11] Stevens v. Davison, 18 Gratt. (Va.) 819 (1868).
[12] Reynolds v. Diamond Mills Co., 69 N. J. Eq. 299 (1905); Jacobson v. Brooklyn, etc. Co., 184 N. Y. 152 (1906); Francis v. Brigham, etc. Co., 70 Atl. Rep. (Md.) 95 (1908).

§ 121. Directors Dealing with Corporation.

The subject of directors' dealings with their corporations is too extensive for full treatment here. A director occupies a fiduciary relation to his corporation and should as far as possible avoid any position in which his personal interest is adverse to that of the corporation. He may, however, speaking generally, make any contract with his corporation that is fair and to its interests. His contract is therefore not void but merely voidable, and if no stockholder objects will stand.[13] Also cases have arisen where a contract between a director and his corporation has been ratified by a majority of stockholders at a duly called meeting, and the courts have sustained the contract.[14] Also, if all the stock is owned by the directors, and there are no creditors, a director may contract with his corporation at pleasure.[15]

In all cases where a director is personally interested in any particular contract or other matter to be acted upon by the board, he should withdraw from the room while the vote is being taken and his absence should be noted on the minutes. To be valid the action must be taken by a legal quorum exclusive of the interested party.[16] (See § 133.)

Sometimes when it is obviously necessary or desirable for directors to contract with their corporation, the whole matter is covered by proper by-law provision, as in the following extract from the by-laws of the United States Steel Corporation:

> "Any director individually may be a party to, or may be interested in any contract or transaction of this company, provided that such contract or transaction shall be approved or be ratified by the affirmative vote of at least ten directors not so interested."

[13] Fort Payne Rolling Mill v. Hill, 174 Mass. 224 (1899); Welch v. Bank, 122 N. Y. 177 (1890); Cont. Ins. Co. v. N. Y., etc. R. R. Co., 187 N. Y. 225 (1907).
[14] Nye v. Storer, 168 Mass. 53 (1897); Gamble v. Queens Co. Water Co., 123 N. Y. 91 (1890).
[15] McCracken v. Robinson, 57 Fed. 375 (1892); Barr v. R. R. Co., 125 N. Y. 263 (1891).
[16] Curtin v. Salmon, etc. Co., 130 Cal. 345 (1900); Butts v. Wood, 37 N. Y. 317 (1867); Steele v. Gold, etc. Co., 95 Pac. (Colo.) 349 (1908); Schaffhauser v. Brewing Co., 218 Pa. St. 298 (1907).

§ 122. Common Law Liability of Directors.

The liabilities of directors fall naturally under two heads—common law liabilities and liabilities imposed by statute. Under the common law the directors are personally liable for loss or damage resulting from *ultra vires* acts [17] (See § 16); for any unlawful corporate act committed with their connivance, assent or knowledge; for issuance of unpaid or partly paid stock as full-paid; for paying dividends, either negligently or wilfully, that impair the capital stock (See §§ 169, 172), and for any other gross mismanagement. As trustees for the company, they are bound to give its affairs all requisite care and attention. If they do not, they are responsible for any resulting loss or damage.[18] They are not, however, responsible for the results of errors of judgment in their management of the ordinary business affairs of the corporation.[19]

§ 123. Statutory Liabilities of Directors.

In almost every state of the Union liabilities have been imposed upon directors by statute. Thus in New York—a typical state—directors may be held personally liable as follows:

> (1) For declaring dividends except from surplus profits, or for dividing, withdrawing or paying out any part of the capital except that authorized by law.
>
> (2) For making a loan of corporate money to any stockholder, or for discounting from corporate

[17] National Cash Reg. Co. v. Leland, 94 Fed. 502 (1899); Wickersham v. Crittenden, 93 Cal. 17 (1892).
[18] Cook on Corp., § 703; Cassidy v. Uhlmann 170 N. Y. 505 (1902); Brinckerhoof v. Bostwick, 88 N. Y. 52 (1882); Campbell v. Watson, 62 N. J. Eq. 396 (1901); Hayes v. Pierson, 65 N. J. Eq. 353 (1903); Elliott v. Baker, 194 Mass. 518 (1907).
[19] Chick v. Fuller, 114 Fed. 22 (1902); Swentzell v. Penn Bank, 147 Pa. St. 140 (1892); Citizens' Bldg. Asso. v. Coriell, 34 N. J. Eq. 383 (1881); People v. Equitable etc. Society, 124 App. Div. (N. Y.) 714 (1908).

funds any note or evidence of debt for any stockholder, or for receiving the same for any instalment due on stock.

(3) For making any certificate or report or public notice that is false in any material respect.

(4) For making transfers of property to officers or stockholders when the company is insolvent or threatened with insolvency, for the purpose of preferring or defrauding creditors.

(5) In case of dissolution, as trustees for all corporate property that may come into their hands.

In the majority of the states directors guilty of most of the enumerated offenses are not only personally liable, but are also criminally liable under the laws against fraud, larceny and embezzlement.

When any action is taken by the board in violation of law or which might involve its members in a liability, any dissenting director may always relieve himself from responsibility by proper procedure. In some states this procedure is prescribed by statute. Usually it involves the entry of his dissent or protest on the minutes of the particular meeting, or, if such entry is refused, publication of the protest.

It may be said generally that the law as to the liabilities and obligations of directors is much more satisfactory in theory than in practice, and that the best possible method of avoiding loss through wrongful or ill-judged acts of the directors is to confine the membership of the board to men of known integrity and character.

CHAPTER XV.

MEETINGS OF DIRECTORS.

§ 124. Time of Meetings.

The by-laws usually set forth the general details of directors' meetings. The board may itself provide for any details not already prescribed by some competent authority.

Special meetings of directors are called when the necessity arises. Regular meetings are held at specified times—commonly once a month—usually fixed by the by-laws. In the smaller corporations with boards consisting of a few members easily assembled in special meeting, and also in the larger corporations whose affairs are conducted mainly by standing committees, regular board meetings once a quarter, or even at longer intervals, are frequently sufficient.

§ 125. Place of Meetings.

The usual place for meetings of directors is the principal office of the corporation in the state of its creation. Directors' meetings may, however, be held elsewhere, either within the state,[1] or without the state in the absence of prohibition,[2] if properly authorized by the charter, the by-laws or by due resolution of the directors. If pro-

[1] Corbett v. Woodward, 5 Sawy, 403 (1879); Ashley Wire Co. v. Ill. Steel Co., 164 Ill. 149 1896).
[2] 2 Cook on Corp., § 713a; Saltmarsh v. Spaulding, 147 Mass. 224 (1888).

hibited by statutes, charter or by-laws, meetings outside the state are void, and their actions of no effect.[3]

In a majority of the states the statutes provide that directors' meetings may be held outside the state if authorized in some specified manner—usually by the by-laws, in some states by the charter, in others by either, but in one or two states by mere resolution of the directors. Other provisions affecting directors' meetings outside the state are found in a number of states.

§ 126. Purposes of Meetings.

At duly assembled regular meetings of directors any business within the power of the board may be transacted. At special meetings, unless otherwise agreed by every member of the board, only such business may be acted upon as is set forth in the call and notice of the meeting. If, however, the notice of a special meeting does not specify its purposes, any ordinary business affairs of the corporation may be transacted thereat, unless the by-laws specifically provide that only such business as has been duly notified may be transacted at special meetings of the board. (See § 129.)

§ 127. Assembling Meetings.

The time and place of regular meetings are usually prescribed in the by-laws, are supposed to be known to the directors, and do not depend for their legality upon calls, waivers or notices.[4] Notices are, it is true, generally provided for in the by-laws, but this is a practical measure to ensure the attendance of directors, and is not in compliance with legal requirements. To prevent any question on this point, however, the by-laws of the larger corporations

[3] Brockway v. Gadsden, etc. Co., 102 Ala. 620 (1893); Union Nat. Bk. v. State Bank, 155 Mo. 95 (1899).
[4] Whitehead v. Rubber Co., 52 N. J. Eq. 78 (1893); Western Imp. Co. v. Bank, 103 Iowa 455 (1897); Atlantic, etc. Co. v. Sanders, 36 N. H. 252 (1858).

customarily provide that failure to send out notice of a regular meeting shall not affect its legality, nor the legality of any action taken thereat.

Special meetings, on the other hand, are assembled as the necessity arises, must be called by proper authority, and must be formally notified to every member of the board, unless these formalities are duly waived. Accordingly special meetings of the board are assembled by means of the call (See Forms 50, 51) followed by notice (See Form 60), or by means of a combined call and waiver of notice. (See Form 48.) Or if all the members of the board can be gotten together, a special meeting may by agreement (See Form 49) be held at any time and without formality. These methods of assembling meetings of directors are discussed in the sections which follow.

§ 128. Call for Special Meetings.

The call for a special meeting of directors is the formal instrument which authorizes its assembling, specifying its time, place, and purposes, and usually directing or otherwise obligating the secretary to notify such meeting to the members of the board. (See Forms 50, 51.)

In some few states the statutes prescribe by whom special meetings of directors may be called. In the majority of the states the matter is left entirely for by-law regulation. These almost invariably empower the president to call special meetings, usually alone, but sometimes in conjunction with some other officer. Usually they provide that two or more of the directors may call such meetings. Occasionally a certain proportion in interest of the stockholders are authorized thereto. Whether so specified in the by-laws or not, special meetings of directors may always be called by due resolution of the board.

The call for a special meeting of directors by whomsoever issued, to be legally effective, must always specify the

time of meeting and its place, and if business of special importance is to be considered this must also be set forth.

The place is usually—though not necessarily unless so specified by statute or by-laws—the principal office of the corporation within the state of incorporation. (See § 125.) In the absence of conflicting provisions, special meetings may be called to meet at any reasonable place in the discretion of the party or parties issuing the call.

The time at which the meeting is to be held must be reasonable, and must be definitely stated, both day and hour being given. The particular business to be transacted must be specified with reasonable detail, and ordinarily no other business may be transacted at such special meeting.

§ 129. Notice of Special Meetings.

When a call in due form for a special meeting of directors is handed to the secretary, it is his duty to send out notices of the meeting thereby authorized. These notices are sent in such manner—usually by mail or telegraph—and at such time before the meeting as is prescribed by the by-laws, or otherwise as will under ordinary conditions, permit the attendance of all the members of the board.[5]

The by-laws also frequently prescribe that no business save that specifically set forth in the call and notice shall be considered or acted upon at such special meetings. If not so prescribed, a notice specifying time and place, but not the business to be transacted, is sufficient to authorize all ordinary corporate business.[6] It is otherwise if important or unusual business is to be transacted at the special meeting.[7]

When the by-laws do not prescribe the specific details

[5] People v. Albany Medical College, 26 Hun (N. Y.) 348 (1882); Ashley Wire Co. v. Illinois Steel Co., 164 Ill. 149 (1896); Stockton, etc. Works v. Houser, 109 Cal. 1 (1895).

[6] *In re* Argus Co., 138 N. Y. 557 (1892); Ashley Wire Co. v. Illinois Steel Co., 164 Ill. 149 (1896).

[7] Mercantile Library Hall Co. v. Pittsburg, etc. Assoc., 173 Pa. St. 30 (1896).

of notice, both its time and manner must be reasonable. Just what constitutes reasonable notice of special meetings of directors is a matter on which judicial decisions vary, and should therefore be settled by express by-law provision. (See Forms 60, 61.)

It is always presumed that notice duly mailed with postage prepaid to the last known address of each member of the board is received by the party addressed. Notice by postal card is sufficient when this method of notification is customary. Any irregularity in call or notice may be cured by a ratification of the special meeting or of the business transacted thereat at a subsequent regular meeting of the board, or if all the members are present at and participate in a special meeting (See § 131), this in itself cures any defect in call or notice.[8] Unless cured in some way, failure to give notice to any one director invalidates the action of a special meeting.[9]

§ 130. Call and Waiver of Notice.

The call and waiver of notice of a special meeting of directors is merely a call for the meeting combined with a waiver of the usual formalities of notice This must be signed by every member of the board, but when so signed authorizes a meeting to be held at the time and place, and for the transaction of the business specified therein. Whenever the members of the board are readily accessible, the call and waiver is the preferable method of assembling special meetings. (See Ch. XXVIII.)

§ 131. Consent Meetings.

If all the members of the board of directors are gotten together or find themselves together, *and all agree to hold*

[8] Minneapolis Times Co. v. Nimocks, 53 Minn. 381 (1893); Chase v. Tuttle, 55 Conn. 455 (1888).

[9] People v. Batchelor, 22 N. Y. 128 (1860); Relley v. Campbell, 134 Cal. 175 (1901); Broughton v. Jones, 120 Mich., 462 (1899); Hill v. Coal Co., 119 Mo. 9 (1893).

a special meeting, it may be held then and there, and any desired business transacted thereat without further formality. Such a meeting is usually termed a "consent meeting," and in New York and some few other states is recognized by statute law. Elsewhere such a meeting is valid under the common law.[10] (See Form 49.)

§ 132. Opening Directors' Meetings.

At the time appointed for the meeting, the president of the corporation—or the chairman of the board, if such official exists—or in his absence the vice-president, calls the meeting to order. Should these officers be absent, the next ranking officer of the corporation, if a member of the board, presides. Should such officer be the secretary, he should merely call the meeting to order, and then request some other member of the board to act as chairman, or, if objection is made, the appointment should be effected by motion. (See § 82.)

If no officer of the corporation who is also a member of the board is present, it is proper for any member of the board in attendance to call the meeting to order. and in the absence of objection ask some one to act as chairman. If there is objection, the appointment should be made by means of a motion.

No formal roll-call of a directors' meeting is usual, the secretary merely noting the names of those present, which are later entered on the minutes. If there is no quorum, business may not be transacted at that session, but the meeting may adjourn from day to day, if desired, until a quorum is secured.

Formal submission of proof of notice of a directors' regular meeting is not necessary unless called for by the president or some member of the board. The secretary

[10] Minneapolis Times Co. v. Nimocks, 53 Minn. 381 (1893); Bank of Nat. City v. Johnston, 60 Pac. Rep. 776 (1900).

should, however, preserve a copy of the notice sent out and endorse upon it the fact that it was duly mailed on the date given thereon to the last known address of each member of the board.

In the case of special meetings of directors the call and notice, or call and waiver of notice as the case may be, should be submitted to the meeting, and be entered on the minutes in full with a statement of the circumstances. The matter is of importance, as the due call of the meeting with sufficient notice to each member is absolutely essential to its legality.

At a regular meeting of directors the order of business as set forth in the by-laws is followed, unless set aside by formal motion or unanimous consent. At a special meeting it is but seldom applicable.

§ 133. Quorum.

The number required for a quorum at directors' meetings should be fixed by the charter or by-laws.[11] If this is not the case, the common law prevails, and a majority of the whole board is necessary for a quorum.[12] A majority of the board in this connection is a majority of the whole number constituting the board, and not of some reduced number resulting from vacancies or removals.[13] A majority of a quorum can decide any question properly brought before the meeting.[14]

Directors cannot vote by proxy at directors' meetings, but must be personally present in order to act thereat.[15] No legal authority exists for permitting directors to vote or to be considered as present when merely connected by telephone, nor for permitting an absent member to sign

[11] Hoyt v. Thompson's Ex., 19 N. Y. 207 (1859).
[12] Wells v. Rubber Co., 19 N. J. Eq. 402 (1869).
[13] Moore v. Rector, 4 Abbott's N. Cas. (N. Y.) 51 (1873).
[14] Wells v. Rubber Co., 19 N. J. Eq. 402 (1869); Foster v. Mill Co., 92 Mo. 79 (1887).
[15] Perry v. Oil Co., 93 Ala. 364 (1890); State v. Perkins, 90 Mo. App. 603 (1901).

the minutes of the directors' meeting, and be counted present after the fact, though any action so taken may be validated by action at a subsequent meeting where a quorum is really present.

A director cannot legally vote at directors' meetings on a matter in which he is personally interested, nor is such action usually valid if he is counted to make a quorum when such a question is put to vote.[16] (See §§ 108, 120, 121.)

§ 134. Reading of Minutes.

As a matter of due parliamentary procedure, any unapproved minutes of preceding directors' meetings should be read and approved or be otherwise disposed of at a regular meeting of directors before any other business is considered. If, however, time is pressing, the president sometimes directs that the reading of the minutes be dispensed with, or the same end is accomplished by formal motion.

The minutes of stockholders' meetings are never read at directors' meetings unless as a matter of information or by special request, nor, if read, would their approval by the board be of any legal effect. The minutes of any preceding board meeting should not be approved at a special meeting unless the approval of such minutes was specifically mentioned as one of the purposes of the meeting. (See § 165.)

§ 135. Reports.

At a regular meeting, after disposal of the minutes, the president takes up the next order of business and calls for reports, from officers first, and then from committees, if any are to report. When a report is made it may be disposed of by motion, or, if there are no objections, the president may himself direct that the report be received and filed. A verbal report does not require any formal disposal, the secretary reporting its substance in the minutes as a matter of course.

[16] Metropolitan, etc. Tele. Co. v. Domestic, etc. Co., 44 N. J. Eq. 568 (1888); Curtin v. Salmon River Co., 130 Cal. 345 (1900).

§ 136. Unfinished and New Business.

The business of a special meeting is, as a rule, all new business. It is set forth in both the call and notice, and may be presented by the presiding officer, or he may call on the secretary or some member of the board for its introduction.

At regular meetings of directors it usually rests with the secretary to bring up any matters of unfinished business. New matters requiring attention are brought up by the president or by any member interested.

The election of officers, as it takes place but once a year, does not appear upon the regular order of business. It therefore comes under the head of "New Business," and, at the proper meeting, may be taken up at any suitable time when new business is under consideration. Usually the by-laws provide that the election of officers shall be held at the first directors' meeting after the annual meeting of stockholders. (See Ch. XLIII.)

Officers are usually elected by ballot though in the absence of express provision therefor, the board may follow any method that will secure a fair expression of the wishes of its members.

When the board is agreed as to who are to be elected, time is frequently saved by instructing the secretary to cast the single ballot of the meeting for the recited list of officers. Or a mere motion unanimously carried that the named persons be respectively appointed to the specified offices, is legally sufficient. The election of officers by the board is sometimes held to be more in the nature of an appointment than of an election.[17]

[17] State v. Kupferle, 44 Mo. 154 (1869).

Unless otherwise specified by the by-laws or prevented by conditions, the officers-elect may at once begin the discharge of the duties of their respective offices. Frequently the newly elected president and secretary take charge of the meeting immediately after the result of the election has been announced.

A person cannot be made an officer against his will.[18] Acceptance of the position to which an officer-elect has been appointed is therefore necessary. This may either be expressed, or be indicated by the performance of the duties of his office, or even by his failure to decline the office when properly notified of his election thereto.[19]

To prevent any question as to whether a vacancy has been created by the election to an official position of a person who does not accept the office, the statutes, charter or by-laws should provide that officers hold their positions until the election and acceptance or qualification of their successors. (See §§ 112, 143.)

§ 137. Adjournment.

When the business of a meeting has been finished, or when for any reason the board cannot longer continue in session, an adjournment should be taken, either *sine die*, which terminates the meeting absolutely, or, if important business is left unfinished, to some specified future date.

A meeting adjourned to some future time is on reassembling legally regarded as a continuation of the original meeting, may transact any business that could have been transacted at the original meeting, and does not necessarily require any notification to the members of the board.[20]

[18] Blake v. Bayley, 82 Mass. 531 (1860).
[19] Danville, etc. Co. v. Brown, 90 Va. 340 (1893); Lockwood v. Nat. Bank, 9 R. I. 308 (1869).
[20] Smith v. Law, 21 N. Y. 296 (1860); Western Imp. Co. v. Bank, 103 Iowa, 455 (1897).

CHAPTER XVI.

STANDING COMMITTEES.

§ 138. General.

Standing committees are those permanent committees of the board to which some measure of its discretionary power has been delegated. Their purpose is twofold: (1) to secure the prompt, decisive action of a small, easily assembled body, and (2) to obviate the necessity for frequent meetings of the board.

As the discretionary powers of the board itself are delegated to standing committees, they must be composed of members of the board. Their powers are exercised during the interim between the board meetings, and within the limits of their authority they act with the same binding force and effect as the board itself and their contracts are not subject to revision by the board.[1]

When authorized thereto by the charter or by-laws of the corporation, the power of the board to delegate its authority to properly constituted standing committees is well established.[1a] How much power should be so delegated is to be determined by the nature and conditions of the company's business.

It is but rarely that more than two standing committees are deemed necessary. If but one committee exists, it is usually termed the "executive committee," and its powers are ordinarily those of the board. If two commit-

[1] But see Com'l, etc. v. Northampton, etc. Co., 190 N. Y. 1 (1907).
[1a] Sheridan El. L. Co. v. Chatham Nat. Bank, 127 N. Y. 517 (1891); Olcott v. Tioga Railroad Co., 27 N. Y. 546 (1863); Union Pac. Ry. Co. v. Chicago, etc. Ry. Co., 163 U. S. 564, 597 (1895).

tees are appointed, the second is usually designated the "finance committee," and to this committee is given direct supervision of the corporate finances and accounts; all general matters remaining in charge of the executive committee. The matter is, however, one to be regulated by the charter or by-laws, and variations of the usual arrangements are frequent.

When standing committees are appointed with the usual powers, they are the real managing bodies of the corporation, the board merely receiving their reports and supervising their operations. In a small corporation, or any corporation with a compact, easily assembled board, they are, as a rule, an unnecessary and even undesirable complication. They are advantageous only when the board is so large or so scattered as to be difficult of assembling, or when for other reasons the business of the corporation cannot be properly transacted by the board as a whole. Not infrequently the standing committee is used as a device by which a few men practically manage the affairs of the corporation, the board being superseded when there is no real occasion therefor.

The membership of standing committees is seldom less than three, nor, save in very large corporations, more than five. To increase the number renders the standing committee unwieldy and defeats the purpose of its creation.

§ 139. Appointment of Standing Committees.

The appointment and the membership of standing committees are usually prescribed by charter provision. The details of appointment, and of the duties and procedure of these committees thereafter are sometimes fixed by the charter, but are usually and better left for the by-laws. Frequently the charter merely prescribes that a standing committee, or committees, shall or may be appointed, leaving all details to the by-laws.

The charter or by-laws frequently provide that the president of the company shall be *ex officio*, a member of the principal standing committee, and the treasurer, if a director, is designated a member of the finance committee as a matter of course. Beyond this, the appointment of standing committees is usually and properly left to the board.

The election or appointment of members of the standing committees is usually for a specified term. Vacancies in the committees occurring meanwhile are filled in the manner prescribed by the charter or by-laws. Sometimes these provide that such vacancies shall be filled for the unexpired term by the remaining members of the committee, perhaps subject to approval by the board of directors at its next meeting. Usually and preferably all vacancies in the standing committees are filled by the board of directors.

§ 140. Organization of Standing Committees.

The usual officers of the standing committees are the chairman and recording secretary. These are sometimes appointed by the board, while at other times the appointments are left to the committees. When the president of the company is *ex officio* a member of a standing committee he is also usually designated as its presiding officer. The secretary of the corporation is frequently appointed secretary of one at least of the standing committees. If not a member of the board, he then merely acts as recording officer of the committee, not participating in its deliberations.

§ 141. Meetings of the Standing Committees.

The following by-law gives a very clear statement of the usual procedure in regard to meetings of standing committees. It is for the most part merely declaratory of

the common or parliamentary law which governs the actions of any committee: "The standing committees shall fix their respective regulations and rules of procedure, and shall meet where and as provided by such rules or as provided by the resolutions of the board of directors, but at every meeting a majority of the whole committee shall be necessary to constitute a quorum, and the affirmative vote of a majority of the whole committee shall be necessary for the adoption of any resolution or course of action. Full minutes of the proceedings of committee meetings shall be kept, and reports made to the board of directors when requested."[2]

The general rules governing the meetings of a standing committee are the same as for those of meetings of the board.[3] Special meetings must be duly notified to every member of the committee unless waived by formal agreement or by the presence of every member at the meeting. Actions taken at meetings of the committee should be expressed by means of duly adopted motions or resolutions, and careful minutes of all proceedings should be kept in a minute book provided for the purpose, and not in the minute book of the directors. The committee proceedings should from time to time be reported to the board, either by direct report or by submission of the committee minutes.

Unless otherwise expressly provided, the majority of any standing committee constitutes a quorum and a majority of that quorum has power to act.[4]

[2] Conyngton on Corporate Organization, p. 326.
[3] Met. Tel. Co. v. Domestic Tel. Co., 44 N. J. Eq. 568 (1888); McNeil v. Chamber of Commerce, 154 Mass. 277 (1891).
[4] Burleigh v. Ford, 61 N. H. 360 (1881); State v. Jersey City, 27 N. J. L. 493 (1859); McNeil v. Boston Chamber of Com., 154 Mass. 277 (1891).

CHAPTER XVII.

THE CORPORATE OFFICIALS.

§ 142. Officers.

The term "officers" is here applied to those permanent agents of the corporation appointed or elected—usually by the board of directors—as the direct representatives of the board, and of the corporation. The directors are themselves at times and with legal correctness styled "officers," but to avoid confusion the term is, as a rule, employed in the present volume to designate those officials subordinate to the board.

§ 143. Appointment of Officers.

The stockholders have the original right to elect or appoint officers of their corporation, and in the absence of preventing statutes this power may be reserved to them. In practice, however, by express provision of the statutes, charter or by-laws, the power of appointing officers is almost invariably vested in the board of directors.

Certain corporate officers are usually specified and required by statutes, charter, or by-laws, and such officers are elected as a matter of course. Beyond these, the board may appoint any other officers or agents necessary to properly conduct the business of the corporation. If the time and manner of election of corporate officials is not prescribed by some higher authority, the directors may appoint them in such manner and at such time as they deem best. (See § 136.)

The election of one person to two corporate offices is common, and is usually authorized by charter or by-law provision. If otherwise, the board still has power to combine any two or more official positions in one person if the duties of the combined positions do not conflict.[1]

The term for which corporate officials are elected is usually prescribed by proper charter or by-law provision, and seldom exceeds one year. As a matter of business policy such term should not be longer than that of the directors by whom the officials are elected. That is, if the directors are elected annually, the officers also should be elected annually so that each new board may appoint its own agents.

The appointment of managers, experts or other specially skilled employees is, however, of a different nature. These are not so directly agents of the board, and contracts for their services extending over a term of years are frequently advantageous or even necessary to the corporation. Such contracts are entirely within the power of the board without special charter or by-law authorization.

Unless they resign or are removed in some manner, the corporate officials hold over after the expiration of their elective term, until they are relieved by properly elected or appointed successors.[2] This is frequently a statute, charter or by-law provision, but, if otherwise, is a matter of common law. (See § 136.) These *de facto* officials have every power that they possessed before the expiration of their elective terms. (See § 148.)

As the board elects and appoints officers, it has also the power to fill vacancies among them without specific authorization.[3]

[1] People v. Green, 58 N. Y. 295-304 (1874); Sargent v. Webster, 54 Mass. 497 (1847); 2 Cook on Corp., § 712.
[2] Mining Co. v. Abraham, 26 Ore. 282 (1894); Thorington v. Gould, 59 Ala. 461 (1877); Agricultural Soc. v. Houseman, 81 Mich. 609 (1890).
[3] *In* Matter of Union Ins. Co., 22 Wend. 591 (1840).

§ 144. Qualifications of Officers.

The officers are the agents of the board of directors and of the corporation. Hence any one who may act as an agent is capable of acting as a corporate official, and in the absence of prohibition a married woman, a minor, an alien, or one of its own directors, may be legally elected as an officer of the corporation.

Membership in the board is, as a rule, a necessary qualification for the president and vice-president of a corporation. They are almost invariably the presiding officers of the board, and when this is the case, the election of a president or vice-president not a member of that body might lead to difficult situations.

§ 145. Compensation of Officers.

The compensation to be paid officers is occasionally prescribed or limited by the by-laws, and still more occasionally by the charter, but as a rule is left to the discretion of the board.

Directors have no power to fix their own compensation as directors, nor should officers who are also members of the board vote upon their own salaries.[4] (See §§ 108, 120.) The board has, however, unless restricted by charter or by-law provision, full power to fix the salaries or other compensation of its appointees.[5] Any officer, agent or employee who is not a director may recover the reasonable value of his services from the corporation even though no specific agreement as to compensation was made at the time of his election or appointment.[6] (See § 108.)

§ 146. Powers and Duties of Officers.

The mere fact of election to office does not necessarily

[4] Miner v. Ice Co., 93 Mich. 97 (1892); Steele v. Gold Mining Co., 95 Pac. (Colo.) 349 (1908); Schaffhauser v. Brewing Co., 218 Pa. St. 298 (1907).
[5] Waite v. Windham Co. Min. Co., 37 Vt. 608 (1865); Fitchett v. Murphy, 46 App. Div. (N. Y.) 181 (1899).
[6] Cheeney v. Lafayette Ry. Co., 68 Ill. 570 (1873); Smith v. Long Island R. R. Co., 102 N. Y. 190 (1886).

in itself confer any power or duties upon the officials of a corporation.[7] Custom or usage may have attached certain powers and duties to certain official positions, but the corporation may disregard this and vary the powers and duties of the different officers as seems to it best.

In general it may be said of corporate officials that, as agents of the corporation, they are governed by the general law of agency. Accordingly a corporate official has only those powers which are conferred upon him or are incidental to the exercise of these powers.

The different sources from which the powers of corporate officials are derived are, in rank of their authority, (1) the statutes of the state, (2) the charter, (3) the by-laws, (4) resolutions of directors, and (5) usage.

Statutory provisions affecting corporate officials are few. The charter likewise but seldom contains provisions affecting the officers of the corporation, though occasionally such provisions are inserted therein for the sake of permanence. The by-laws, however, usually prescribe the official powers and duties with fulness, and the directors, subject to the provisions of the higher authorities referred to, confer such other proper official powers and prescribe such other proper official duties as they see fit.

Beyond all these, it will usually be found that the officers transact certain routine business[8] and perform certain duties as a matter of custom, and their acts are valid and binding upon the corporation, even though not specifically authorized.[9]

Also it may be stated generally that whenever the directors permit an officer to exercise apparent authority in the corporate affairs or transactions, the corporation is

[7] R. R. Co. v. Bayne, 11 Hun (N. Y.) 166; Aff'd, 75 N. Y. 1 (1877); Cushman v. Cleveland, etc. Co., 84 N. E. (Ind.) 759 (1908).
[8] Fitzgerald, etc. Co. v. Fitzgerald, 137 U. S. 98 (1890); Mining Co. v. Bank, 95 Fed. Rep. 23 (1899); Phillips v. Campbell, 43 N. Y. 271 (1870).
[9] Ins. Co. v. McCain, 96 U. S. 84 (1877); New York, etc. R. R. Co. v. Schuyler, 34 N. Y. 30 (1865); Story on Agency, §§ 126, 127; Clement v. Young, etc. Co., 69 N. J. Eq. 347 (1905).

bound thereby as to third persons as fully as if such officer had been duly authorized.[10]

Beyond this, corporate officers not infrequently act clearly without the bounds of their authority, relying upon ratification of their acts by the board of directors later. If so ratified, the corporation is bound and the officials are absolved from all responsibility for their *ultra vires acts.*[11] If, however, the official action is not ratified, the corporation is not bound and the officers are personally liable for their acts.[12]

The validity of an officer's acts depends entirely upon his authority, and not on the place in which the authority is exercised.[13] Therefore, when in the proper discharge of his duties, his acts are as effective in one place as another, and equally binding upon the corporation.

The board may temporarily delegate the powers of an official to another person, provided such delegation is reasonable and only for such length of time as may be actually necessary to conserve the interests of the corporation. An officer cannot delegate his powers to another officer in any material matter, even temporarily, unless specially authorized thereto by the by-laws or by action of the board.[14]

§ 147. Liabilities of Officers.

An officer contracting for his corporation within the limits of his authority is merely a corporate agent, and if not guilty of fraud or deceit, does not bind himself and cannot be held personally liable in any way. If, however, he exceeds his authority, he renders himself personally

[10] New York & New Haven R. Co. v. Schuyler, 34 N. Y. 30 (1865); Fifth Ave. Bank v. Railroad Co., 137 N. Y. 231 (1893); 3 Clark & Marshall on Corp., § 708; Louchheim v. Bldg. Assn., 211 Pa. St. 499 (1905).
[11] Rolling Mill v. R. R., 120 U. S. 256 (1886); Nims v. Boys' School, 160 Mass. 177 (1893); Northwestern Fuel Co. v. Lee, 102 Wis. 426 (1899).
[12] Wight v. Madison, 26 N. Y. 117 (1862).
[13] Hastings v. Ins. Co., 138 N. Y. 473 (1893).
[14] Caldwell v. Life Assn., 53 App. Div. (N. Y.) 245 (1900). As to when corporation will be bound, see Emerson v. Hat Co., 12 Mass. 237 (1815); also Luttrell v. Martin, 112 N. C. 593 (1892).

liable,[15] unless the corporation later ratifies his action,[16] when he is released.

Officers are bound to use ordinary care and diligence in the conduct of the corporate business and are therefore liable for any losses caused by their neglect, mismanagement or wrong-doing in the discharge of their official duties,[17] though not for an error of judgment.[18]

An officer is also personally liable for any wrong he does on behalf of his corporation, such as sending out false and deceptive reports, statements, prospectuses, etc., even though the corporation is also liable.[19] (See § 122.)

In many states statutes exist prescribing penalties for various misdeeds of corporate officials. Thus in New York, neglect to make proper entries in the stock book, or to exhibit this book on request to those entitled to its inspection involves a penalty of fifty dollars and of resulting damages; rendering a false report involves liability for all resulting damages; loaning corporate funds to a stockholder or allowing him to withdraw his investment in any way renders officers and directors personally liable for all debts of the corporation until the amount is returned, while falsifying accounts or erasing or destroying the corporate records is made a forgery. (See § 123.)

§ 148. De Facto Officers.

A *de facto* officer is one actually in possession of an office and exercising its powers and duties by virtue of some other authority or right than that of a regular, unquestioned election or appointment. He must be "distinguished on the one hand from a mere usurper of an

[15] Wight v. Madison, 26 N. Y. 117 (1862).
[16] See citations under 11.
[17] Mason v. Henry, 152 N. Y. 529 (1897); Wilkinson v. Dodd, 40 N. J. Eq. 123 (1885).
[18] Briggs v. Spaulding, 141 U. S. 132 (1890); Freeman v. Sea View Hotel Co., 57 N. J. Eq. 68 (1898); Holmes et al. v. Willard, 125 N. Y. 75 (1890); People v. Equit., etc. Society, 124 App. Div. (N. Y.) 714 (1908).
[19] Cowley v. Smyth, 46 N. J. L. 380 (1884); Morgan v. Skiddy, 62 N. Y. 319 (1875).

office and on the other hand from an officer *de jure*,"[20] i. e. one holding his position by legal right. It not infrequently happens that the results of an election are disputed or that an election is not held. In the first case if the officers claiming election enter upon their official duties, or in the second case if the old officers continue in office, the acting officials are *de facto* officers, and, until ousted, or superseded, their official acts are legal and binding upon the corporation. (See §§ 112, 142.)

Speaking generally it may be said that anyone connected with a corporation who is publicly allowed to act as its officer or agent, is a *de facto* officer. Persons dealing with the corporation cannot usually investigate and ascertain whether those who purport to represent it are legally appointed. The law therefore holds that the acts of these *de facto* officers are binding on the company even though they have no legal right to the position they pretend to hold.

§ 149. Removals and Resignations.

When an officer is elected for a definite term and accepts the office, a contract has been made for that term, and, unless power has been given the board by express provision of statutes, charter or by-laws to remove the corporate officers at pleasure, the incumbent can only be legally removed for cause.[21] If a removal is to be made, the cause must be such as will justify breaking the contract with the offending official, charges must be brought against him, and he must be allowed an opportunity to defend himself.[22] If removed without cause, his official

[20] Waterman v. Chicago, etc. R. R. Co., 139 Ill. 658-665 (1892); Merchants' Bank v. Citizens' Gas Light Co., 159 Mass. 505 (1893); Mining Co. v. Anglo-Californian Bank, 104 U. S. 192 (1881).
[21] Nathan v. Tompkins, 82 Ala. 437 (1886); Powers v. Blue Grass B Assn., 86 Fed. 705 (1898); State v. Kuehn, 34 Wis. 229 (1874).
[22] State v. Adams, 44 Mo. 570 (1869); State v. Kuehn, 34 Wis. 229 (1874).

status ceases but the corporation is liable to him for breach of contract.[23]

In some few states the statutes give the directors power to remove officers at pleasure. Elsewhere it may be given them by charter or by-law provision.[24] Such provisions are usually desirable as the board is responsible for the proper conduct of the corporate business and should have power to remove an objectionable official without the necessity of a formal trial. When by-laws are adopted giving the directors power to remove officers without cause, they do not authorize the removal of officers already elected, but are effective as to officers elected thereafter.

Under the usual conditions of election, a corporate officer may resign at will,[25] unless he has entered into some distinct agreement to serve the corporation for a fixed period. His resignation should, as a rule, be in writing, be phrased to meet the exact end in view and be delivered to the secretary,[26] though an oral resignation in open meeting is sufficient, especially if followed by acceptance by the board.[27] (See Ch. XXXVI.) It has been held that all the corporate officers cannot resign at once for the purpose of throwing the corporation into the hands of a receiver.[28]

[23] *In re* Griffing Iron Co., 63 N. J. L. 168 (1899); Douglass v. Merchants' Ins. Co., 118 N. Y. 484 (1890); Brindley v. Walker, 70 Atl. Rep. (Pa.) 794 (1908).
[24] State v. Adams, 44 Mo. 570 (1869); Danah v. Ice & Storage Co., 50 W. Va. 417 (1901).
[25] Yorkville Bank v. Zeltner B. Co., 80 App. Div. (N. Y.) 578 (1903); Van Amburgh v. Baker, 81 N. Y. 46 (1880).
[26] Manhattan Co. v. Kaldenberg, 165 N. Y. 1 (1900); Noble v. Euler, 20 App. Div. (N. Y.) 548 (1897).
[27] Briggs v. Spaulding, 141 U. S. 132-150 (1891); Fearing v. Glenn, 73 Fed. 116 (1896).
[28] Zeltner v. Brewing Co., 174 N. Y. 247 (1903).

CHAPTER XVIII.

THE CORPORATE OFFICIALS.—(Continued.)

§ 150. Executive Officers.

The necessary officers of a corporation, sometimes termed the "executive officers," are the president, secretary and treasurer. One or more vice-presidents are usual. In addition to these, other officers or agents are frequently appointed, as managing directors, general managers or superintendents, counsel, auditors and special agents for particular purposes.

§ 151. The President.

The president is the usual presiding officer of the corporation. His duties vary widely. In the smaller corporations, in addition to the duties more strictly pertaining to his office, he is frequently assigned the active management of the corporate business. In the larger corporations the duties usually incident to the president's office are frequently allotted in greater or less degree to other officers. Thus a chairman of the board is occasionally appointed to preside at meetings of the directors; chairmen of the standing committees supervise and direct the matters within the scope of their committees, and vice-presidents will discharge some measure of the president's duties.

The usual duties of the president assigned him by the by-laws are well set forth in the following extract:[1]

[1] Conyngton on Corporate Organization, pp. 314-315.

"The President, when present, shall preside at all meetings of the stockholders and of the Board of Directors; shall sign all certificates of stock; shall sign, or countersign, as may be necessary, all such bills, notes, checks, contracts and other instruments as may pertain to the ordinary course of the Company's business, and sign, when duly authorized thereto, all contracts, orders, deeds, liens, licenses and other instruments of a special nature.

"He may also, in the absence or disability of the Treasurer, endorse checks, drafts and other negotiable instruments, for deposit or collection, and shall, with the Secretary, sign the minutes of all meetings over which he may have presided.

"At the first regular meeting of the Board in January he shall submit a complete report of the operations of the Company for the preceding year, together with a statement of the Company affairs as existing at the close of such year, and shall submit a similar report at the annual meeting of stockholders; also, he shall report to the Board of Directors, from time to time, all such matters coming within his notice and relating to the interests of the Company as should be brought to the attention of the Board.

"He shall be, *ex officio*, a member of all standing committees, shall have such usual powers of supervision and management as may pertain to the office of President, and perform such other duties as may be properly required of him by the Board of Directors."

Unless expressly authorized thereto, the president has no power to execute a corporate deed, a mortgage, an assignment of property, a license or other formal instrument, or to borrow money or bind the company by a promissory note.[2] Nor has he legally power to buy, sell or contract for the corporation outside the regular routine of business, unless authorized thereto by resolution of the board, or

[2] Bennett v. Keen, 59 N. J. Eq. 634 (1899); Tobin v. Roaring Creek, etc. R. Co., 86 Fed. 1020 (1898); Western Nat. Bank v. Armstrong, 152 U. S. 346 (1893); Gause v. Trust Co., 124 App. Div. (N. Y.) 438 (1908).

unless, from his previous action as the authorized agent of the company in particular directions, such authority may be rightly inferred.

When, however, the president is authorized to attend to any particular business, he is also empowered to make all contracts usual or necessary in the course of that business.[3] Also in practice he is so commonly authorized to act generally for the corporation that unless it can be shown in any particular instance that he has gone clearly outside the bounds of his usual authority, his contract will bind the company.[4]

The president, as he is to preside over the meetings of the board, must himself be a director. He is usually *ex officio* chairman of one at least of the standing committees. (See § 140.)

§ 152. The Vice-President.

Vice-presidents designated in rank as first, second, third and so on, are usually appointed in accordance with the corporate needs. These, in the order of precedence, perform the duties of the president in the absence of that official. Beyond this in the larger corporations active functions are usually provided for one or more vice-presidents, these duties being taken more or less directly from those usually discharged by the president. The position of vice-president is, however, frequently entirely honorary.

When the vice-president rightly assumes the office of president, he possesses and exercises every power of that official as fully as does the president himself when acting.[5]

§ 153. The Secretary.

The secretary is the recording officer of the corpora-

[3] Patterson v. Robinson, 116 N. Y. 193 (1889); Mining Co. v. Anglo-Am. Bank, 104 U. S. 192 (1881); Wells, Fargo & Co. v. Enright, 127 Cal. 669 (1900); Rathbun v. Snow, 123 N. Y. 343 (1890).

[4] Trustees, etc. v. Connolly, 157 Mass. 272 (1892); Sarmiento v. Boat & Oar Co., 105 Mich. 300 (1895); Fitzgerald Cons. Co. v. Fitzgerald, 137 U. S. 98 (1890); Scribner v. Flagg Mfg. Co., 175 Mass. 536 (1900).

[5] Ellison v. Branstrator, 153 Ind. 146 (1899); Smith v. Smith, 62 Ill. 493 (1872).

tion. His usual duties are well set forth in the following by-law extract:[6]

> "The Secretary shall keep full minutes of all meetings of the stockholders and of the Board of Directors; shall read such minutes at the proper subsequent meetings; shall issue all calls for meetings and notify all officers and directors of their election; shall have charge of and keep the seal of the corporation and affix the same to certificates of stock when such certificates are signed by the President and Treasurer, and shall affix the seal, attested by his signature, to such other instruments as may require the same.
>
> "He shall keep the stock certificate book and the other usual corporation books, and shall prepare record, transfer, issue, seal and cancel certificates of stock, as required by the transactions of the Company and its stockholders. He shall sign with the President all contracts, deeds, licenses and other instruments when so ordered.
>
> "He shall make such reports to the Board of Directors as they may request, and shall also prepare such reports and statements as are required by law. He shall make out, twenty days before any election of directors, a complete list of the stockholders entitled to vote at such election, arranged in alphabetical order and giving the number of shares of stock that may be voted by each, and shall keep the same open to inspection at the office of the Company until the time of and during the said election. He shall allow any stockholder, on application in business hours, to inspect the stock certificate book, the stock transfer book and the stock ledger.
>
> "He shall attend to such correspondence and to such other duties as may be incidental to his office or be properly assigned him by the Board."

The proviso that stock certificates are to be signed by the president and treasurer accords with the provisions of the statutes in New Jersey and some few other states. In

[6] Conyngton on Corporate Organization, page 315.

the majority of the states the signatures to stock certificates are determined entirely by the by-laws and the secretary is commonly one of the signing officials. (See § 31.)

The secretary usually has the seal of the company in his sole charge,[7] though it is sometimes otherwise provided by the charter or by-laws. Ordinarily he should not let the seal go out of the company's office save in his own custody, or otherwise only when directed by resolution of the board.

The general rule as to the use of the seal is that all instruments that require a seal when executed by an individual, require the corporate seal when executed by a corporation. It is customary, however, to use the corporate seal on all formal corporate instruments. It is also used on stock certificates, and it may be said generally that its use on any corporate instrument is not legally objectionable. (See § 15; also comment on Forms 144, 145.) In event of the absence or disability of the secretary, the board of directors may authorize any other officer or agent of the company to affix the seal. The mere impression of the seal upon the paper, without the use of wax or wafer, is sufficient. Almost any duly authorized device or impression intended to serve as a corporate seal will be recognized by the courts as such.

The secretary is distinctively the recording officer of the corporation, and is the custodian of the minute book and usually of all other corporate records save those pertaining to the financial transactions of the corporation.

The seal and the corporate books should be kept in the office of the corporation. The directors are entitled to inspect the corporate books at any time, and the secretary should also extend this privilege to the stockholders to such extent as is (1) prescribed by the statutes, (2) by the

[7] Ellison v. Branstrator, 153 Ind. 146 (1899).

by-laws or usage of the corporation, (3) by order of a court having jurisdiction. If he wrongfully refuses to allow inspection of the corporate records he will be liable in damages.[8] (See §§ 35, 147.) When the secretary's term of office expires, or prior thereto if he resigns or is removed, he must surrender the corporate records even though he may have paid for them out of his own pocket.[9]

It is most desirable that the secretary be informed as to all ordinary matters of corporate procedure. Not only is this required for the proper discharge of his own official duties, but he is usually expected to supply his official associates with information as to details of corporate management.

The secretary will find a practical work on corporate procedure of much assistance. In addition he should have a copy or a digest of the statutes of the state as far as these relate to corporations. A manual of parliamentary procedure will also be found useful. Where the statute law modifies or adds to the general or common law, or requires additional formalities, such data should be noted on the margins of the proper pages of the secretary's book on corporate procedure in order to make it complete for that particular state. A volume so annotated will be found invaluable for the use of the corporate officials.

A corporate calendar or some equivalent (See Form 198) is almost indispensible to the proper discharge of the secretary's duties. The dates and data of this calendar will vary in the different states. They are also varied by the charter or by-law requirements of the particular corporation.

§ 154. The Treasurer.

"When not otherwise prescribed by the state laws or

[8] Legendre v. N. O. Brewing Assn., 45 La. Ann. 669 (1893); Fuller v. Hollander, 47 Atl. (N. J.) 646 (1900).
[9] State v. Goll, 32 N. J. L. 285 (1867).

by the charter or by-laws of the corporation, any person who may act as agent for another is eligible to act as treasurer of the corporation. Thus in the absence of prohibition, a married woman, a minor, an alien, one of its directors or even another corporation might be elected and legally serve as its treasurer. Nor does election to another office in the same corporation in itself disqualify an incumbent to act as treasurer, provided the duties of the two offices do not conflict.

"In the smaller corporations the treasurer is usually either acting bookkeeper or has direct control of the books of account and keeps his own special books as well. A knowledge of bookkeeping and of the financial duties connected with his office is then a necessary qualification.

"In the larger corporations the treasurer's duties do not usually include the details of accounting. These devolve upon subordinate employees or are perhaps relegated to an accounting department, leaving the treasurer free to devote his attention to the general oversight and management of the corporate finances and financial affairs. A knowledge of accounts and bookkeeping, though desirable, is not then so essential."[10]

The following by-law extract presents an excellent synopsis of the usual duties of the treasurer:[11]

> "The Treasurer shall have the custody of, and be responsible for, all moneys and securities of the Company; shall keep full and accurate records and accounts in books belonging to the Company, showing the transactions of the Company, its accounts, liabilities and financial condition, and shall see that all expenditures are duly authorized and are evidenced by proper receipts and vouchers. He shall deposit in the name of the Company in such depository or depositories as are approved by the Directors, all moneys that may come into his hands for

[10] Bentley on Corporate Finance & Accounting, page 32.
[11] Conyngton on Corporate Organization, pages 315-316.

the Company account. His books and accounts shall be open at all times during business hours to the inspection of any Director of the Company.

"The Treasurer shall also endorse for collection or deposit all bills, notes, checks and other negotiable instruments of the Company; shall pay out money as may be necessary in the transactions of the Company, either by special or general direction of the Board of Directors, and on checks signed by the President and himself, and shall generally, together with the President, have supervision of the finances of the Company.

"He shall also make a full report of the financial condition of the Company for the annual meeting of stockholders, and shall make such other reports and statements as may be required of him by the Board of Directors or by the laws of the State.

"He shall give bond in the sum of five thousand dollars, with sureties satisfactory to the Board of Directors, for the faithful performance of his duties and for the restoration to the Company in event of his death, resignation or removal from office, of all books, papers, vouchers, money and other property belonging to the Company that may have come into his custody."

The first and most important function of the treasurer is to care for the corporate funds.[12] For their safe-keeping he is personally responsible and to this end he is required to exercise all such reasonable vigilance as a careful man of business would employ in safe-guarding his own funds.

Whenever the treasurer's position involves the handling or possession of large sums of money or of considerable property values belonging to the corporation, he should be required to give bond, the amount depending upon the value passing through his hands and the particular conditions. In a small corporation or one where the

[12] Second Ave. R. R. Co. v. Coleman, 24 Barb. (N. Y.) 300 (1857).

responsibilities of the treasurer are light, a bond is an unnecessary formality.

Any regulations as to bank deposits and the signature to checks should be stated clearly in the by-laws. At the first meeting of directors a resolution should be passed in accordance with these by-law provisions, directing that the funds of the company be deposited in a designated bank or banks. (See Forms 38, 84, 85.) The deposit is then opened as directed by this resolution. The corporate funds should be deposited in the corporate name. Under no circumstances should the treasurer deposit funds of the company in his own name or in his name as treasurer, or mingle them in any manner with his own.

The treasurer has, as a matter of course, charge of the corporate books of account. These he must surrender on the termination of his treasurership, to his duly appointed successor, even though they may have been purchased with his personal funds.[13]

The treasurer is directly responsible to the board of directors and must obey any instructions within its powers. Also the individual members of the board have the right at any reasonable time to examine the books and accounts of the company and to make any proper enquiries of the treasurer, but they have no power to instruct him or interfere with the proper discharge of his duties.[14]

§ 155. Chairman of the Board.

In addition to the officers already named, provision is sometimes made for a chairman of the board. His first and frequently only duty is to preside at all meetings of directors. In some cases he is given much of the authority that usually belongs to the president, whose position then becomes either subordinate or largely honorary. The

[13] State v. Goll, 32 N. J. L. 285 (1867).
[14] People v. Throop, 12 Wend. (N. Y.) 183 (1834).

duties of the chairman of the board are usually determined entirely by the by-laws.

§ 156. Managing Director.

Occasionally a member of the board is appointed to the active management of the corporate affairs, and is then termed a "managing director." His powers are strictly defined by the terms of his appointment.

The managing director is the direct representative of the board and his position is usually equal to or superior to that of the president. It is of much greater dignity and responsibility than the position of general manager, though the managing director's duties may and sometimes do include those generally assigned to the general manager.

The appointment of the managing director is usually provided for and his duties fixed by by-law provisions. These should be as clear and complete as possible. The duties of the position are not so definite or so well understood as those of the other corporate officials, and custom cannot be relied upon to supply missing details or settle conflicts.

§ 157. General Manager.

The general manager, while an officer of the company, is not one of the executive officers. He has usually no concern with the general corporate affairs or finances, but is appointed to take charge of its ordinary business, which he manages exactly as he would were he employed by a firm or an individual. His powers and duties are limited to the transaction of the particular business in which the company is engaged, and, unless expressly given him, he has no power to contract for the company outside its routine business

If the by-laws do not specifically provide for the election of a general manager, the board still has authority to appoint or employ such an official and prescribe his duties and salary just as it might employ any other necessary agent or employee of the company.

§ 158. Counsel.

In the larger corporations one or more attorneys are usually retained as a permanent feature of the management. In the smaller corporations such regular employment is not usual, the board being left to employ counsel at such times and on such terms as may be expedient.

Sometimes payment of counsel is made entirely contingent on services rendered. Usually, however, a retainer is paid to cover general advice and consultation, with the understanding that anything beyond this, such as drafting contracts, conducting litigation or other active legal assistance, shall be paid for at the regular rates.

The counsel of the company has usually no authority over the company affairs save in connection with litigation which the board of directors has authorized him to undertake, or in special matters which have been placed in his hands.

§ 159. Auditor.

In the larger corporations it is customary to elect an auditor, whose duty it is to devise and supervise the whole system of corporate accounts. He should of necessity be an expert accountant. His specific duties are usually fixed by the board of directors, or the finance committee when one exists.

Where the operations of the corporation are not sufficient to justify the permanent employment of an auditor, it is usual to provide for periodical audits of the corporate accounts. Such audit should be made by a professional

accountant accustomed to the work and whose reputation and standing will insure an accurate and proper report. The superficial examination and report made by the usual auditing committee of directors is of but little practical value.

PART V.—MISCELLANEOUS CORPORATE MATTERS.

CHAPTER XIX.

MINUTES AND OTHER CORPORATE RECORDS.

§ 160. The Corporate Books.

The financial records of a corporation are much the same as those of a firm or individual. Some of their entries and accounts are peculiar to the corporation but the books do not differ from those of any other form of business organization. The discussion of the books of account is outside the province of the present volume.[1]

The more important books of record peculiar to the corporation are the minute book (See § 161; Forms 37, 38, 109-114), the stock certificate book (See § 34; Forms 16-20), the transfer book (See § 36; Forms 190, 191) and the stock book and stock ledger (See §35; Forms 192, 193), which are kept by the secretary of the corporation. In addition to these, conditions may arise which require one or more of the following books,—subscription book (See § 167), instalment book (See § 167; Form 194), instalment scrip book (See §167; Form 8), dividend book or register (See § 168; Form 195) and bond and coupon registers. (See § 168.) These books are usually kept by the treasurer of the corporation.

[1] For an excellent discussion of the corporate accounts, see Bentley's "Corporate Finance & Accounting."

(a) MINUTES.

§ 161. The Minute Book.

The minute book of a corporation properly kept is legal evidence of the proceedings of its stockholders' and directors' meetings. The secretary is its custodian and its entries should be made by him alone. Any director has the right to inspect this book at any suitable time. A stockholder usually does not have this right.

The minute book is ordinarily a blank book of the style termed "record" by stationers. It may be had at any price from plainly bound books at fifty cents or less, up to elaborately bound and specially printed books costing from five to twenty-five dollars or even more. A reasonably good and substantially bound book is always to be desired.

The minute book varies in size and general form according to the taste or requirements of the secretary. A common and convenient form is 8½ by 13 inches. Sometimes the book is specially made, of a size and style to match the other corporate records. For a small corporation with few meetings, a book containing one hundred pages will usually be found ample.

When the minutes are kept in a substantially bound volume with longhand entries succeeding each other in regular order, later additions or insertions are difficult if not impossible, and their evidence as to proceedings at the company's meetings is difficult to controvert.

Minutes are, however, not infrequently written with the typewriter on sheets of thin paper, which are then pasted in the minute book. Also at times loose-leaf minute books are employed, in which the pages may be removed, and, after the minutes are written upon them, be reinserted in the book. When either of these plans is followed, substitutions and alterations in the minutes may be made with comparative ease and their value as evidence is diminished.

To avoid this objection to the convenient loose-leaf minute book, each page is sometimes water-marked with its proper number in such manner that substitution is extremely difficult and practically impossible. The same end is sometimes accomplished by the inscription of the president's and secretary's signatures or initials on each page, making substitution without the participation of these officials impossible. It is obvious that this latter method of verification may also be effectively employed when minutes are pasted into the minute book.

§ 162. Contents of Minute Book.

A copy of the company's charter or certificate of incorporation is usually entered on the first pages of the minute book. This may be a copy certified by the Secretary of State, bound or pasted into the book, or, equally sufficient, a careful and legible copy written in the book by the secretary, or, if written on separate sheets, bound or pasted into the minute book. If the copy is made by him, the secretary usually certifies to its correctness.

Following the charter come the by-laws of the company. These begin at the top of the next right-hand page and should also be a careful and legible copy, or a copy bound or pasted in, followed by the secretary's certificate as to the accuracy of the transcription. (See Form 25.)

A few pages immediately following the by-laws should be left blank for the entry of any amendments. Then follow the minutes of the first meeting of stockholders closely followed by the proceedings of the first meeting of directors, and thereafter the minutes of stockholders' and directors' meetings in due sequence as held, each with its distinctive heading. Each meeting should begin at the top of its proper page and no blank pages should be left between the records of the different meetings.

In the larger corporations separate minute books are

provided for stockholders' and directors' minutes and also for the minutes of standing committees. In the smaller corporations a single minute book will usually suffice.

§ 163. Form and Subject Matter of Minutes.

The secretary should spare no pains to secure accuracy in his minutes as they are the legal evidence of the proceedings of the meetings recorded and the authority for any action of the officers required thereby.

The minutes given in the present volume (See Forms 37, 38, 109-114) are in conventional form. Any clear statement of the proceedings is, however, legally sufficient, though a reasonably close adherence to the conventional arrangement is desirable.

It is usual to enter on the minutes of directors' meetings the names of those present. Save in the case of very small corporations, this is not customary or necessary in the case of stockholders' meetings. The secretary should, however, preserve the lists (See Form 99) showing the names of stockholders present at meetings.

During the progress of meetings, letters, reports and other instruments are frequently presented. When of importance, the secretary is usually instructed to enter these upon the minutes. If not instructed, he may use his discretion. If the matters to which they relate are important, they should usually be spread upon the minutes, i. e. entered in full. Generally, however, it is sufficient if the instruments be filed and preserved, such reference being made to them in the minutes as the conditions may demand.

When reports or other instruments are ordered spread upon the minutes, the secretary may usually exercise his discretion as to whether they shall be included in the body of the minutes or follow immediately after them. If, however, the motion or order directs that the instrument follow the minutes, or that it appear in the body of the minutes, the secretary should comply with the letter of his instructions.

§ 164. Recording the Proceedings.

The corporate minutes are a record of the transactions of corporate meetings,—a record of what is done, not of what is said; and the record should usually be as concise and accurate as possible.

If a motion or resolution is passed upon at a meeting, no matter whether adopted or rejected, its disposition should be recorded, but, speaking generally, the debate and discussion should not be set down, nor are the names of the parties by whom minor motions or resolutions are made or seconded of sufficient importance to be entered, nor need any record be made of those voting for or against any such matter.

It may be said further that when the presiding officer decides that a motion or a resolution is properly before the meeting and puts it to vote, the fact that the names of the parties who moved and seconded it or who voted for or against it, are not recorded, does not affect the force of the corporate action. If, however, a motion or a resolution is of importance, or is contested, or of such a nature that it may thereafter be of importance to know by whom the matter was introduced and by whom it was favored and opposed, the record should be made in full. (See Ch. XXXI.)

It sometimes happens that a stockholder or a member opposing some proposed action wishes his objections or protest recorded in the minutes. If his objections are pertinent and not too lengthy, this should usually be permitted, but the secretary should not enter any such objections upon his record unless so directed by a vote of the meeting or by unopposed direction of the presiding officer.

The objecting member sometimes files his protest in writing and in such case the document should be received and filed in the usual course of business, and this fact be noted in the minutes. In some cases it is necessary for a member of the board to have the dissent to proposed action noted in order to avoid liability. In such case he has a right to demand its entry upon the minutes, and, if refused, may force its entry by proper legal procedure.

Motions are not usually entered verbatim. It is sufficient if their sense is preserved. Resolutions are, however, more formal and should usually be entered in the exact form in which they are adopted. (See Forms 74-98.) The presiding officer of the meeting may always require resolutions and important motions to be reduced to writing before consideration, and if he does this the work of the secretary is greatly lightened.

All papers presented to or used at meetings should be filed for future reference in the custody of the secretary unless otherwise ordered.

Notes of the proceedings are taken as the meeting progresses (See Form 100), and these should be written up in permanent form as soon after the meeting as possible while the events are fresh in the secretary's mind. Should he delay the final entry of his record unduly, doubt may arise as to whether the secretary's notes, or the record of the minute book is the original entry, and if it should be held that the formal minutes are not the original entry, their value as evidence is destroyed.

As soon as the minutes are duly entered in the minute book, they should be signed with the official signatures of the secretary and the presiding officer of the meeting, the secretary usually signing at the right and the presiding officer at the left.

§ 165. Approval and Amendment of Minutes.

Minutes should be approved by the body whose proceedings they record. The approval of stockholders' minutes by the board of directors is absolutely ineffective as is also the approval of directors' minutes by the stockholders, save by way of endorsement or ratification of the directors' action recorded therein.

The minutes of a stockholders' annual or special meeting cannot be approved at a subsequent special meeting unless such approval is noted in the call and notice, but the minutes of any preceding stockholders' meetings, whether annual or special, may always be approved at the stockholders' annual meeting. Likewise the approval of the minutes of a directors' regular or special meeting at a subsequent special meeting is effective if such approval was duly notified as one of the purposes of the meeting (See §§ 128, 129), while any unapproved minutes of directors' meetings may always be approved at a regular meeting of directors. (See § 134.)

The minutes of a stockholders' meeting are usually not passed upon until the following annual meeting, when all unapproved minutes should be read and, if no objections are offered, approved. (See § 88.) Directors' minutes likewise are usually only approved at regular meetings. The approval of minutes relieves the secretary of all direct responsibility for the accuracy of their record and also serves as a ratification of the proceedings recorded therein.[2]

When minutes are approved, no record need be made save the statement in the minutes of the meeting then in progress that the minutes of the previous meeting or meetings, giving their dates, were read and approved. Usually, however, for convenience the secretary also notes

[2] Delano v. Trustees, 138 Mass. 63 (1884); County Court v. Ry. Co., 35 Fed. Rep. 161 (1888).

at the bottom of each set of approved minutes the proper facts as "Approved at the annual meeting of stockholders held January 10th, 1909."

If corrections of minutes are ordered (See § 88), the minutes of the meeting then in session should show exactly what corrections were directed and in what minutes. In the corrected minutes the alteration should appear in red and a marginal note should give the date of the meeting at which such correction was directed. Red lines may be drawn through any part ordered stricken out and any correction be interlined, but no erasure should be made in any case, as the corrected minutes should show both the error and the correction.

Sometimes it happens that those present at a meeting decide, contrary to the facts, that the secretary has made errors in his record of a preceding meeting, and move that a portion of the minutes be stricken out or corrected. Whether right or wrong, if the majority of those present at the meeting vote in favor of the motion, the secretary must carry it into effect. In such case he should draw red lines through the part ordered stricken out and interline in red any matter ordered inserted, and make the proper entry in the margin of the minutes. This then shows the whole matter; that the record was made in one way, and was, at a later date, ordered changed. The minutes of the meeting at which such change was ordered should also give a complete statement of the matter.

§ 166. "Cut and Dried Minutes."

The annual meeting of stockholders is frequently held in a locality distant from the residence of the parties really in interest, as for instance the meetings of the non-resident corporations of New Jersey, Maine and many other states, which must be held within the state of incorporation. Also there are many corporations in which the whole or

the greater part of the stock is held by combinations and the subordinate corporations only hold such meetings as are essential to maintain their legal existence. In these and in many other cases the only necessity for meetings is to give the proper legal expression to matters that are already determined, and it is possible to write out the entire minutes in advance.

The proceedings at such meetings are simple. A controlling interest, usually in the shape of proxies, is sent or taken to the place of meeting. If the regular officers are not present or are not authorized to act, officials for the meeting are appointed at the time by those holding these proxies. The prepared minutes are then read and agreed to, the meeting is adjourned and the accepted minutes, signed by the officials who acted at the meeting, are returned to the secretary of the company and preserved in his minute book.

(b) Other Corporate Records.

§ 167. Subscription and Instalment Books.

The subscription book is nothing more than the ordinary subscription list (See Forms 1-3), followed by pages properly ruled for the entry of subscriptions the whole bound into a single volume.

The instalment scrip or instalment certificate book is a book of blank instalment certificates (See Forms 8-10) attached to the proper stubs, the whole book being similar in plan and arrangement to the stock certificate book. The scrip or certificates of this book are issued as instalments are paid on stock subscriptions in evidence thereof. When all the instalments are paid and the regular stock certificates are issued to the subscribers, these receipts are surrendered to the secretary and are by him cancelled and pasted to their proper stubs in the instalment scrip book.

The instalment book is a book in which a record is kept

of each instalment due on subscriptions when subscriptions are so payable. The arrangement and manner of keeping this book is shown under Form 194.

§ 168. Dividend Book and Bond Register.

The dividend book contains for each dividend declared, a list of the stockholders with their respective stockholdings, the amount due each, the date of its payment, and finally the stockholder's receipt therefor. (See Form 195.) In the larger corporations and in many of the smaller ones, the book is not kept at all, dividend checks and vouchers taking its place.

The bond register is a book of record in which are entered the data relating to bond issues, showing for each bond, its number, date, names of the parties to whom issued, any transfers, and the due dates and amounts of interest payments. The coupon register is, as its name indicates, a book in which coupons, clipped and presented for payment, are, after cancellation, pasted in convenient form for subsequent reference.*

* For forms of these books see Bentley's "Corporate Finance & Accounting," pages 129-134.

CHAPTER XX.

DIVIDENDS.

§ 169. Declaration of Dividends.

Profits are the only proper source of dividends. The declaration of dividends when there are no profits is contrary to law, usually involves a personal liability to the parties responsible, and in many states involves a criminal liability as well. If an illegal dividend is contemplated, any stockholder may enjoin its declaration or payment, and should the company become insolvent, the stockholders who receive such dividends may be compelled to make restitution.[1]

The declaration of dividends rests entirely in the discretion of the board unless otherwise provided by statutes, charter or by-laws.[2] It is but seldom if ever that the stockholders can compel the directors against their judgment to declare a dividend, even though liberal reservations of profits are being made for working capital or as a surplus fund for future contingencies. "The courts have, no doubt, in many cases overruled the directors who proposed to pay dividends, but I am not aware of any case in which the court has compelled them to pay when they have expressed their opinion that the state of the accounts did not admit of any such payment."[3]

There is, however, a point at which the courts will in-

[1] 2 Cook on Corp., § 458; Stevens v. U. S. Steel Corp., 68 N. J. Eq. 373 (1905).
[2] Hunter v. Roberts, Throp & Co., 83 Mich. 63 (1890); Burden v. Burden, 159 N. Y. 287 (1899); New York, etc. R. R. v. Nickals, 119 U. S. 296 (1886).
[3] Bond v. Barrow, etc. Co., 86 L. T. Rep. 10 (1902).

terfere, but this point is not ordinarily reached until bad faith on the part of the directors can be shown. "The directors must act in good faith. If they fail to do so and it clearly appears that they have accumulated earnings not required in the prosecution of the business which they withhold from the stockholders for illegitimate purposes, a court of equity may interfere and compel a distribution of such earnings."[4]

As between holders of the same class of stock, dividends must always be equal. Particular stockholders cannot be favored in any way as to time, amount or manner of payment. Different classes of stock may, however, be created with different rights as to dividends. (See § 29.)

Dividends are declared by resolution of the board and are usually fixed at a certain percentage of the par value of the outstanding stock, though not infrequently at a certain number of dollars per share. The dividend is usually made payable at some specified future date to stockholders of record at some earlier date, also specified. (See Forms 123-129.) This effective date of dividends cannot be fixed prior to the date of declaration. Thus the directors could not November 1st, declare a dividend payable to stockholders shown to be such by the books of the company on the 15th of the preceding October.[5] Any such power would, it is obvious, open a wide door for injustice and fraud.

When a dividend is once declared, it becomes an indebtedness of the corporation and the corporation cannot thereafter rescind the resolution nor recall the dividend. (See § 172.) Also if the funds necessary to pay a dividend are actually set aside for the purpose, they cease to belong to the company, and, in accordance with the terms of the declaration, become the property of the stockholders.[6]

[4] Matter of Rogers, 161 N. Y. 108 (1899).
[5] Jones v. Terre Haute, etc. R. R., 57 N. Y. 196 (1874).
[6] King v. Paterson, etc. R. R., 29 N. J. L. 82 (1860); Hunt v. O'Shea, 69 N. H. 600 (1899); Pollard v. First Nat. Bank, 47 Kans. 406 (1891).

§ 170. Form of Dividends.

Dividends are usually payable in cash and, unless otherwise stated, cash payment is always understood. Actual cash is not, however, essential to the declaration or even to the payment of a dividend. "The surplus may be in cash and then it may be divided in cash. It may be in property and if the property is so situated that a division thereof among the stockholders is practicable, a dividend in property may be declared and that may be distributed among the stockholders."[7] Or if the property is not in form for direct distribution among the stockholders, it may be sold, or be used as the security for a loan, and the cash secured be used in payment of dividends. Or scrip, bonds or stock may be issued against this property and be declared as dividends. So long as every dollar of dividends is taken directly from, or is represented by an equal amount of actual profits, the form of the dividend is immaterial.[8]

Profits earned and invested or passed over to surplus in years of prosperity, do not lose their character as profits, but if no profits are made in subsequent years may be drawn on for dividends. Also profits for the current year, though expended upon betterments or, as stated, existing in the form of property, may be made the basis of dividends.[9]

An exception to the general rule that dividends impairing capital may not be paid, is found in the case of companies working mines or operating under leases, patent rights, etc. Here the corporation is organized for the express purpose of working out the property which represents its capital, and the impairment and final exhaustion of this property is the object of the corporate operations.

[7] Williams v. W. U. Tel. Co., 93 N. Y. 162 (1863).
[8] Rose v. Barclay, 191 Pa. St. 594 (1899).
[9] Beers v. Bridgeport Spring Co., 42 Conn. 17 (1875); Williams v. W. U. Tel. Co., 93 N. Y. 162 (1883).

Hence, if the company is solvent and its receipts from legitimate operation are in excess of its expenditures, these receipts may be treated as profits and be declared as dividends.[10]

Dividends when declared should be duly notified to the stockholders. (See Forms 123-129.) Notice of dividends may be sent by mail or may be published, though notice by publication may not in itself be sufficient.[11] In many corporations dividend checks are sent to the stockholders and the form of notice is not then of the same importance. The notice to be given of dividends may be prescribed by the by-laws but is usually left to the discretion of the treasurer or otherwise is fixed by resolution of the board. Dividend notices are usually signed by the treasurer but are at times and not improperly signed by the secretary.

§ 171. Payment of Dividends.

Dividends as usually declared are to be paid to stockholders who appear of record on a certain date. It is customary at the close of business on that day, to close the stock books to transfers for a prescribed time in order to give the treasurer an undisturbed opportunity to make up his dividend statement. (See § 37.)

As soon as the stock books are closed, or otherwise, as soon as the proper date is reached, the treasurer is furnished by the secretary with a list of the stockholders of record as they appear upon that date, or otherwise the stock books are turned over to the treasurer in order that he may secure the names and addresses of the stockholders himself. The treasurer then makes up his dividend statement, showing the stock held by each stockholder and the amount of dividends due him. (See Form 195.) The checks for dividends (Form 154) are made out in accordance with this statement and on the appointed date are mailed to the parties to whom they belong, or otherwise the stockholders are notified to call and receive their dividends in person.

[10] Lee v. Neuchatel Asphalte Co., L. R. 41 Ch. D. 1 (1889).
[11] King v. Paterson, etc. Co., 29 N. J. L. 82 (1860).

When the stockholders are required to call in person for dividends, they usually receipt for the same upon the dividend book. If the checks are mailed, receipt forms are sometimes sent with them, to be signed and returned by the recipient. Usually and preferably, however, the check itself is deemed an all-sufficient receipt.

Dividends are always payable to the owner of stock who appears of record upon the books of the company on the day on which the dividend becomes effective. Thus a dividend might be declared payable December 15th to stockholders who are of record November 4th. Then if no stipulations are made as to the ownership of the dividend, stock transferred before November 4th carries the dividend with it, but stock transferred after November 4th does not.[12]

It sometimes happens, however, that a party owns stock on the effective date of the dividend, evidenced by assigned certificates, but has neglected to have this stock transferred to his name on the books of the company. His dividends will then be credited, and, unless due notice of the conditions is filed by the real owner, be paid to the holder of record. This latter must, however, account to the real owner of the stock for any dividends received after the termination of his equitable ownership of the stock.

Difficult questions sometimes arise as to respective rights of life-tenants of stock and the remainder man as to the ownership of dividends, particularly when these dividends are declared in the form of stock, scrip or bonds. Speaking generally, the life-tenant has a right to all dividends declared while his life-tenancy continues.

Where stock has been pledged, the dividend must be

[12] Corgan v. Lee Coal Co., 218 Pa. St. 386 (1907).

paid to the party to whom the stock is pledged if the company has been properly notified. (See § 42.) This pledgee, however, must account to the real owner of the stock for any such dividends at the time the pledge is redeemed.

§ 172. Illegal Dividends.

Illegal dividends are of three classes: (1) Those declared in disregard of the rights of some of the stockholders; (2) those declared in violation of charter or by-law provisions of the particular corporation; (3) those which either impair the capital stock[13] or threaten the solvency of the corporation. The declaration of an illegal dividend or the payment of an illegal dividend already declared may be enjoined and stopped by proper action of the stockholders.

In most of the states a liability is imposed by statute upon the directors and officers for any violation of laws regulating dividends. (See §§ 122, 123, 147.) The treasurer is not, however, personally liable in any way for the payment of dividends in obedience to a proper resolution of the board—unless he knows such dividends to be absolutely fraudulent—save in a few states where the liability for dividends prohibited by statute has been extended by express enactment to the executive officers of the corporation if they consent thereto or concur therein.

The general rule that a resolution declaring a dividend cannot be rescinded does not apply in the case of resolutions authorizing illegal dividends. Such dividends may be rescinded at any time before their actual payment.

[13] Goodnow v. Am. Writing Paper Co., 69 Atl. Rep. (N. J.) 1014 (1908).

CHAPTER XXI.

CONSOLIDATION, REORGANIZATION AND DISSOLUTION.

§ 173. Forms of Consolidation.

The methods by which corporations may be practically unified are as follows:

1. Consolidation of one or more corporations by statutory procedure.
2. Purchase by a corporation of the entire assets of one or more other corporations.
3. Lease by a corporation of the entire property of one or more other corporations, usually for a specified amount or a guaranteed dividend.
4. Purchase by a corporation of a stock control in one or more other corporations.
5. Combination, usually by means of a holding company.[1]

The terms "consolidation," "combination," "merger" and "amalgamation" are loosely applied to any of the foregoing plans for joining the interests of two or more corporations. Strictly speaking, a consolidation is the combination or merging by procedure prescribed by the statutes, of two or more corporations into a single new organization embracing the respective interests and property of the merged corporations.[2] Such consolidation without statutory authority is *ultra vires* and hence void, unless authorized by unanimous vote of all the stockholders.

[1] Noyes' Intercorporate Relations, § 1.
[2] Green's Brice's Ultra Vires (Second Edition), § 631.

In any case where it is desired to unify corporate businesses, careful study of all the circumstances and local statutes should be made before deciding on the method to be followed, in order on the one hand to avoid violation of statutory provisions, and on the other hand to secure the most effective possible combination.

§ 174. Statutory Consolidation.

In nearly all the states provision is made for the consolidation of non-competing railroads. Not so many have statutes authorizing consolidation of business corporations. Such statutes, when they exist, are usually made to apply only to corporations engaged in the same or similar business. Under such provisions a gas company and an electric-light company have been held competent to consolidate. Ordinary business corporations rarely combine under the statutory provisions, as it is usually simpler to unite by some other method.

Where there are statutes providing for consolidation, it is usually specified that a majority or two-thirds or three-fourths of the stockholders must vote in favor of such action. In many of the states dissenting stockholders may require the corporation to purchase their stock at an appraised valuation. If there is no statutory form for consolidation, it may, unless in some way prohibited, always be authorized by the unanimous vote of all the stockholders.

The usual procedure for statutory consolidation is as follows: (1) Agreement as to terms by directors of the consolidating corporations; (2) submission of directors' agreement to the stockholders of each company at a duly assembled meeting; (3) assent of the stockholders to the directors' agreement by a required vote; (4) filing of certified copies of the agreement and the vote in its favor in

the same offices in which the original certificate of incorporation of each of the consolidated corporations was filed.

§ 175. Consolidation by Sale or Lease of Assets.

(a) *Sale of Assets.* When all the stockholders consent, a business corporation—as distinguished from a public utiiities corporation—may sell its entire assets for the stock of another corporation. The first corporation may then dissolve and divide its assets—which consist of the stock of the other corporation—among its stockholders. The purchasing corporation then continues both its own business and the business of the dissolved corporation, the stockholders of the defunct corporation now holding their proportionate interest in the operating corporation.

This is the simplest and best method of effecting a consolidation. The only obstacle to its use is found in the fact that one dissenting stockholder can interpose and prevent the consummation of the plan. In such case it is often possible to buy out the dissenting stockholder or stockholders, and carry out the consolidation as proposed.

A public utilities corporation having a franchise derived from the public is not free to sell it at pleasure. In such cases consolidation must be effected in some other way.

(b) *Lease of Property.* A lease of the entire property of a prosperous corporation may only be made by unanimous consent of all its stockholders, and consolidation by means of a lease contract is therefore only available where consolidation could be effected by sale of the corporate assets as already discussed.

A corporation that is in a failing condition may, however, lease its property by action of its directors, or of a majority of its stockholders when such lease is for the best interests of the creditors and stockholders,[3] and in this

[3] Skinner v. Smith, 134 N. Y. 240 (1892); Bartholomew v. Derby Rubber Co., 69 Conn. 521 (1897).

case a practical consolidation by means of a lease is possible.

In many cases railroads are empowered to lease their properties, and such action may be authorized by majority vote of the stockholders. A practical consolidation by means of a lease is then possible.[4]

Where a valid lease of a corporation's entire property is made, the lessor corporation's only active business operations are then the reception of its rentals and the apportionment of these among its stockholders as dividends. In some cases property is leased on the basis of a guaranty of a certain dividend on the stock of the lessor corporation.

§ 176. Consolidation by Purchase of Controlling Interest.

When it is desired to unify the operations of two or more corporations, it may be done by the common ownership of a controlling interest in each corporation. This controlling interest may be in the hands of an individual, a syndicate or a holding corporation.

The approved form is by means of a holding corporation, formed under the laws of New Jersey, New York, Maine, Delaware or some other state where corporations are empowered to hold the stock of other corporations. This "holding company" buys up a majority of the stock of the companies which it is desired to unite. At the next annual elections of these controlled corporations boards of dummy directors are elected, who manage the different combined corporations along common and non-conflicting lines in accordance with the instructions of the holding corporation.

The plan is a very effective method of forming a trust.

[4] Dady v. Georgia, etc. Ry., 112 Fed. 838 (1900).

§ 177. Combinations.

This is a very general term embracing pooling agreements, trusts, the different forms of holding companies, and general associations to prevent competition, maintain prices and limit production. The original plan of a board of trustees holding controlling interests in the corporations to be combined was held illegal.[5] Partnership agreements between corporations have likewise been held illegal.[6]

The federal statutes and the statutes of almost every state in the Union prohibit and provide for punishment of combinations in restraint of trade or for purposes of preventing competition. As yet, in most states of the Union, it is not difficult to evade these prohibitions. The subject is too extensive to permit of treatment here.

§ 178. Reorganization.

Reorganization is generally employed as a means of rehabilitating a corporation that has failed or become financially embarrassed or entangled, when its name, property, franchises, trade-marks or good-will are still worth saving. The term is loosely applied to various forms of consolidation, new incorporations and similar arrangements.

Reorganization is not uncommon in the case of railroads and other public service corporations. The franchises of these corporations must usually be operated or they are lost, and stockholders and creditors are, as a rule, better satisfied to have the corporation continue in some reorganized form under which they still have an interest or recognized claim, even though reduced, than to permit

[5] State v. Standard Oil, 49 Ohio 137 (1892); People v. North River Sugar Refining Co., 121 N. Y. 582 (1890).
[6] Bishop v. Am. Preservers Co., 157 Ill. 284 (1895); Mallory v. Oil Works, 86 Tenn. 598 (1888).

the corporate assets to be sold for the inadequate prices of a forced sale, or lapse for non-user.

Reorganization is also not infrequent in the case of insolvent or embarrassed business corporations when the creditors consent to some adjustment or arrangement of their claims that will permit the corporate business to continue. The reorganization in such case may be limited to a mere issue of additional stock or bonds, or may extend so far as to be in effect a new incorporation.

If such reorganization is not possible and the business of the embarrassed corporation is of sufficient value, the usual plan pursued is for all, or the principal stockholders of the old corporation to form a new and entirely distinct corporation. The property and business of the embarrassed corporation are then allowed to go to forced sale and are bought in as nearly in their entirety as possible by the new corporation. This latter then takes a clear title to these assets and conducts the business thereafter free from all claims of creditors or stockholders of the old corporation. A similar procedure is sometimes improperly employed in order to "freeze out" small or objectionable stockholders, the corporation being deliberately involved or allowed to be involved for the purpose.

§ 179. Dissolution.

A corporation may be dissolved by the expiration of the term for which the charter was granted. This does not, however, often happen. If the corporation is active and prosperous, some form of reorganization or extension of the corporate existence is effected before the expiration of its charter period. If it is not profitable, it is usually dissolved or allowed to lapse long before its charter term expires.

A corporation may also be dissolved by insolvency. In such case a receiver may be appointed to dispose of its

assets and divide the proceeds among its creditors, or the corporation may be allowed to go into bankruptcy and its affairs be wound up by a trustee. Even though a corporation is insolvent, it may be rescued from dissolution by an abatement of the creditors' claims, or by the contribution of additional capital by stockholders or others.

A corporation may always be dissolved and its affairs be wound up by proper procedure if all its stockholders consent. In many states a majority of the stockholders—and in some states less than a majority—may dissolve the corporation under some circumstances by prescribed statutory procedure.

Corporations destitute of assets are sometimes practically dissolved, or allowed to lapse, by simply ceasing to transact business. Such corporations are not technically out of existence and in some cases their officers are still subject to liabilities. The procedure is, however, easy and inexpensive and many corporations end in this manner regardless of the possible liabilities of their officials.

PART VI.—FORMS RELATING TO INCORPORATION.

CHAPTER XXII.

SUBSCRIPTION LISTS AND RECEIPTS.

(a) Subscription Lists.

Subscription lists or agreements are construed liberally by the courts in accordance with their intent. They should, however, contain a clear and reasonably complete statement of the conditions under which the subscriptions are made, as tending directly to prevent the necessity of court interpretation.

Any material misrepresentations or any material changes of the conditions set out in a subscription list release subscribers unless in the latter case the changes are made with their consent. What constitutes a material change will depend upon the conditions. A change of capitalization would ordinarily be material; a change of name usually would not.

Any person competent to contract may make a binding subscription for stock. A corporation cannot, unless by express provision of the statutes or its charter it is allowed to purchase and hold stock of other corporations. When this is the case it may subscribe as freely as an individual, though it may not act as an incorporator.

When a subscription list overruns a single sheet, additional sheets similarly ruled may be pasted on below, or be bound up with the first sheet so that the pages follow each other in regular sequence. When capitalizations are large and many subscribers are to be secured, subscription books are sometimes employed, but usually separate lists are printed or typewritten so that they may be circulated independently. In such case it is customary to provide that the signatures of subscribers may be affixed to the separate instruments with the same legal effect and obligation as if all were affixed to a single instrument. (See Form 3.)

Form 1.—Subscription List. Simple Form.

.....

Subscription List.

HOPKINS METAL WORKING COMPANY.

To be Incorporated under the Laws of New Jersey.

Capital Stock.....$500,000.
Shares.....$100 each.

We, the undersigned, hereby severally subscribe at the par value thereof for the number of shares of the Capital Stock of the Hopkins Metal Working Company set opposite our respective names, and agree to pay for the same in cash on demand of its Treasurer so soon as said Company is organized.

New York City, October 1st, 1908.

NAMES.	ADDRESSES.	SHARES.	AMOUNT.
Harry H. Burton....	20 Broad St., New York..	20	$2,000
William McClellan...	36 West 23rd St., New York	10	1,000

.....

This subscription list is informal but will be found sufficient where the purposes and conditions of the subscription are well understood. It is to be noted that subscriptions under it—as is true of most of the usual forms of subscription agreements—are not binding until the company has been incorporated. (See § 30.) Prior thereto

they are merely continuing propositions to a corporation which is not yet organized and is therefore incapable of becoming a party to a contract. Hence until incorporation such subscriptions may be revoked at the will of the subscribers.

This possibility of revocation may be avoided by the appointment of trustees or a committee of organization to act as the other party or parties to the subscription agreement. The contract is then primarily between the trustees and the subscribers, and subscriptions, subject to the terms of the agreement, are binding and irrevocable from the time they are made. When organized, the corporation takes the place of the trustees and the contract is then between the subscribers and the corporation.

Form 2.—Subscription Agreement. Trustees'.

.....

SUBSCRIPTION AGREEMENT.

THE HARTFORD MACHINE WORKS.

To be Incorporated under the Laws of Connecticut.

Capital Stock.....$1,000,000.
Common Stock....$750,000.
Preferred Stock...$250,000.
Shares....$100 each.

We, the undersigned, hereby severally agree with John M. Staunton and Henry F. Furman, Trustees for the incorporation of The Hartford Machine Works, to subscribe and do hereby subscribe for the number of shares of the Common Stock of said Company set opposite our respective signatures, and agree to pay the par value thereof as follows:

Ten (10%) Per Cent. on demand to John M. Staunton and Henry F. Furman, as Trustees for the said Company, such payment, or so much thereof as may be necessary, to be used for the preliminary and incorporating expenses of the said Company; Thirty (30%) Per Cent. to the Treasurer of the Company on demand ten days after the incorporation of said Company, and the remainder at such times and in such instalments as may be prescribed by the Board of Directors.

New York City, September 15th, 1908.

DATE.	NAMES.	ADDRESSES.	SHARES.	AMOUNT.
Aug. 15.	Nathan C. Gardin	220 Broadway, New York..	25	$2,500

Frequently subscription agreements provide that subscriptions thereunder are not effective unless a certain specified amount is secured. Also in many states the statutes require that a certain proportion of the capital stock shall be subscribed before the corporation may begin its business operations. In either case the subscribers, unless restrained by the terms or form of the agreement, may cancel their subscriptions at any time before the required amount in *bona fide* subscriptions has been secured.

It must also be noted that unless the statutes of the state or the charter of the particular corporation provides that the corporation may begin business when but a portion of its capital stock is subscribed, or unless the subscription list itself provides that subscriptions shall be due and payable sooner, subscriptions are not enforceable until the total authorized capital stock is subscribed in full.

Some time limit is usually fixed in an agreement of this nature within which the prescribed minimum must be raised. If not, a failure to raise the minimum within a reasonable time will in itself release the subscribers.

Form 3.—Subscription Agreement. Conditional. Stock Bonus.

.....

SUBSCRIPTION AGREEMENT.

THE HARVARD STEAMSHIP COMPANY.

A Corporation to be Organized under the Laws of the State of New York for the Operation of a Steamship Line between New York City, New Orleans and Intermediate Points.

Capital Stock.....$10,000,000.
Common Stock....$7,000,000.
Preferred Stock...$3,000,000.
Shares....$100 each.

We, the undersigned, hereby agree with John H. Leigh and Howard P. Moran, as Trustees for the incorporation of The Harvard Steamship

Company, to subscribe and do hereby severally subscribe for the number of shares of the Six Per Cent., Cumulative Preferred Stock of said Company set opposite our respective signatures, and agree to pay the value thereof as follows: Twenty-five (25%) Per Cent. of the amount of our respective subscriptions ninety days after the organization of said Company; Twenty-five (25%) Per Cent. ninety days after the date of said first payment, and the balance at such times and in such amounts as may be required by the Board of Directors of said Company.

The subscriptions of this agreement are conditioned as follows:

1st. That *bona fide* subscriptions hereunder to the amount of Five Hundred Thousand ($500,000) Dollars shall have been secured on or before the 2nd day of January, 1909.

2nd. That the complete organization of the Company shall have been effected on or before the 1st day of February, 1909.

And in case of the failure of either of these conditions, the subscriptions hereunder are to be null, void and of no effect.

It is further understood and agreed and is a condition of the subscriptions hereunder, that for each share of Preferred Stock hereby subscribed for, and paid for in accordance with the terms of subscription, the subscriber is to receive as a bonus and without further payment, one share of the full-paid and non-assessable Common Stock of the said Company.

For the purposes of this agreement, the 1st day of February, 1909, shall be considered the date of organization of said Company, provided its organization has been effected on or before that date.

It is agreed that this instrument may be executed in separate instruments with the same force and effect and individual obligation as if all the signatures thereto were affixed to a single instrument.

New York City, September 1st, 1908.

DATE.	NAMES.	ADDRESSES.	SHARES.	AMOUNT.
Sept. 5..	Schuyler H. Wilson..	Morristown, N. J.	500	$5,000

.....

Under the agreement given above subscriptions cannot be withdrawn by the subscribers but are not payable until the subscription conditions have been fulfilled, and in case of failure are entirely cancelled.

Form 4.—Subscription Blank. Individual.

.....

SUBSCRIPTION BLANK.

THE NEWARK HARDWARE COMPANY.

225 Montgomery St., Newark, New Jersey.

Capital Stock.....$100,000.
Shares.....$100 each.

I hereby subscribe for Twenty-five (25) shares of the Capital Stock of The Newark Hardware Company at the par value thereof and agree

to pay Fifty (50%) Per cent. of said subscription on demand of its Treasurer so soon as said Company is incorporated; the remainder to be paid at such times and in such amounts, not exceeding Ten (10%) Per Cent. of said subscription in any one month, as may be required by the Board of Directors of said Company.

Dated, October 10th, 1908.

HARRY F. DU BOIS,
210 Washington Avenue,
Easton, Pennsylvania.

.....

When subscriptions are to be obtained from parties widely scattered or at a distance, an individual subscription blank is usually desirable and is circulated together with such statements and prospectuses as may be necessary, which are then in effect a part of the subscription agreement.

Subscriptions to the stock of a corporation already formed are at once binding and payable in accordance with their terms. In New York, however, by statute provision any such subscription must be accompanied by at least ten per cent. of its amount before it is binding.

A form of individual subscription blank very frequently used after organization is as follows:

Form 5.—Subscription Blank. After Organization.

.....

SUBSCRIPTION BLANK.

OREGON DEVELOPMENT COMPANY.

Portland, Oregon.
Eastern Office: 10 Wall Street, New York City.

Capital Stock.....$500,000.
Shares.....$10 each.

Enclosed find certified check for.....
payment for.....Shares of the full-paid and non-assessable Stock of the Oregon Development Company to be issued in the name and mailed to the address given below.

.....

Dated..... .....

.....

Make checks payable to order of the Company. The right is reserved to reject or pro-rate subscriptions. Give full name of party to whom stock is to be issued.

The foregoing blank will usually be sent out together with a prospectus giving full details of the company and of the subscription. As will be noted the right is expressly reserved to reject any objectionable subscriptions, or, in case of an over subscription, to pro-rate the same.

Form 6.—Application for Stock. Instalment Payments.

APPLICATION FOR STOCK.

JOHN McNEIL MANUFACTURING CORPORATION.

325 Main Street, Trenton, New Jersey.

I hereby make application for Twenty-five (25) Shares of the Capital Stock of the John McNeil Manufacturing Corporation, a company organized under the laws of the State of New Jersey with a capital stock of Two Hundred and Fifty Thousand ($250,000) Dollars, divided into shares of the par value of One Hundred ($100) Dollars each, and agree to pay for said stock the sum of One Hundred ($100) Dollars per share, as follows: Twenty ($20) Dollars per share in cash and Ten ($10) Dollars per share on the fifth day of each month thereafter until the entire amount has been paid.

It is understood and agreed that I may at any time pay up any balance due hereunder before the due date thereof and that whenever the full amount of my subscription has been paid, I shall receive full-paid and non-assessable certificates for the said Twenty-five (25) Shares of stock.

Check for $..... enclosed.

WILLIS H. McCALL,
Boonton, New Jersey.

Dated October 10th, 1908.

Remit by Check, Bank Draft, Express or Money Order. All applications are subject to acceptance by the John McNeil Manufacturing Corporation.

(b) RECEIPTS FOR SUBSCRIPTION PAYMENTS.

When a subscription to stock is paid in full, certificates are usually issued to the subscriber at once and serve as a receipt for the payment. When, however, payment is made before the organization of the company, or is not in full, or the permanent stock certificates are not ready for delivery, receipts must be given for the moneys paid, the form depending upon the conditions.

If payments on subscriptions are to be made before in-

Form 7. Trustee's Receipt.

No. 35. Shares, 25. $500.

PACIFIC COAST DEVELOPMENT COMPANY.

Eastern Office:
235 Chestnut St., Philadelphia, Pa.

I hereby certify that Max M. Werlein, a subscriber for Twenty-five Shares of the Capital Stock of the Pacific Coast Development Company at its par value of One Hundred Dollars per share, has paid to me as Trustee for said Corporation, on account of said subscription and in accordance with its terms, the sum of Five Hundred Dollars, said amount being the first instalment of Twenty Per Cent. of his said subscription.

This receipt will, upon the organization of the said Pacific Coast Development Company, be received and credited by the Treasurer thereof to its full amount as a payment upon said subscription.

HARRY J. ORMOND,
Trustee.

Philadelphia, Pa., July 15, 1908.

TRUSTEE'S RECEIPT.

No. 35.
Shares subscribed: 25.
Amount subscribed: $2,500.
Instalment: First.
Amount of Payment: $500.
Name: Max M. Werlein.
Date: July 15, 1908.

corporation, trustees are usually selected by the promoters of the enterprise, are made parties to the subscription agreement and are authorized to receive payments on subscriptions. (See Forms 2, 3.) If this is not done, a trustee might be selected later by action or consent of the subscribers. After incorporation payments on subscriptions are as a matter of course made to the treasurer of the company and receipts are issued by him. (See Forms 8-12.)

Subscription receipts are printed or otherwise prepared with blanks for the variable data, such as name of subscriber, number of shares, amount of payment, etc., which are filled in as each receipt is issued. This same data also appears on the stub of the receipt, which is retained as the trustee's or treasurer's record of the transaction. The receipt and stub are usually as a matter of convenience bound in book form.

The form of trustee's receipt given (Form 7) will be found convenient. It is but seldom that more than one subscription payment is made before the organization of the corporation but, if so, a second receipt is usually issued.

When no prior payments have been made to a trustee, the references on the stub of the following form to trustee's payment will, of course, be omitted.

Occasionally the stubs of instalment certificates are provided with a form of receipt similar to that of the stock certificate stub, to be signed by the party receiving the scrip. Inasmuch as the scrip is itself a receipt for money paid in, the secondary receipt is hardly necessary. The receipt for a stock certificate is of a different nature, the stock certificate, save on original issue, not being a receipt for money or value received.

Subsequent payments on subscriptions are sometimes endorsed on the back of the instalment receipts or cer-

Form 8.—Instalment Scrip.

No. 5. Shares, 25. $1,000.

No. 5.

INSTALMENT SCRIP.

PACIFIC COAST DEVELOPMENT COMPANY.

Eastern Office:
235 Chestnut St., Philadelphia, Pa.

Shares subscribed: 25.

Amount subscribed: $2,500.

Payment:

Cash $500
Trustee's Receipt... 500
Total $1,000

THIS IS TO CERTIFY that Max M. Werlein, a subscriber to Twenty-five shares of the Capital Stock of the Pacific Coast Development Company at its par value of One Hundred Dollars per share, has paid into the treasury of the Company on account of said subscription and in accordance with its terms the sum of One Thousand Dollars, the first and second instalments of Twenty Per Cent. each, upon his said subscription.

Upon payment of all the instalments of said subscription and surrender of all outstanding certificates evidencing the same, full-paid certificates for said Twenty-five Shares of stock will be issued to the order of said subscriber.

HARRY J. ORMOND,
President.

HAROLD M. JONES,
Treasurer.

Instalments: 1st and 2nd.

Name: Max M. Werlein.

Date: August 1st, 1908.

Philadelphia, Pa., August 1st, 1908.

tificates. In such case the ruling shown in Form 9 should appear on the back of the certificate.

Form 9.—Endorsement of Instalment Payments.

DATE.	INSTALMENTS PAID.	SIGNATURE OF TREASURER.
September 1, 1908.....	$500	Harold M. Jones.
October 1, 1908.....	$500	Harold M. Jones.

A sufficient number of lines should be allowed for the prescribed number of instalment payments. As payments are made each one is entered and is verified by the signature of the treasurer in the last column. When this plan is followed the stub of the certificate should also have rulings to permit the same entries of date and amount, in order that both certificate and stub may show a complete record of the conditions.

This arrangement is satisfactory and convenient but is not always practicable, in which case a separate receipt or certificate is issued for each instalment payment.

The form which follows is practically a certificate of partly paid stock. As further payments are made they are either endorsed on the certificate, or the certificate is surrendered and a new certificate issued in its stead.

Form 10.—Instalment Certificate.

Organized under the Laws of West Virginia.

No. 106. 60 Shares.

STAMSWOOD IRON COMPANY.

INSTALMENT CERTIFICATE.

This Certifies that Harold P. Bronson is entitled to Sixty Shares of the Capital Stock of the Stamswood Iron Company of the par value of One Hundred Dollars each, upon which Sixty-five Per Cent. has been paid, and which is subject to further calls and assessments to the extent of Thirty-five Per Cent. A full-paid certificate will be issued for said stock after all instalments have been paid and upon surrender of this certificate.

Said stock is transferable only on the books of the Company by the stockholder or his duly authorized attorney upon surrender of this certificate.

{ CORPORATE SEAL. } HOWARD H. STAMSWOOD, President. JOHN H. STAMSWOOD, Treasurer.

Dated, October 9, 1908.

When stock subscriptions have been paid and permanent certificates are not ready for delivery, temporary certificates are usually issued. (See Form 12.) If a less formal instrument is preferred, the following interim receipt will be found convenient. This has the usual stub—not shown in the form—and may be signed by the president as well as the treasurer if desired.

Form 11.—Interim Receipt.

No. 75. Shares, 5.

TREASURER'S RECEIPT.

HARVEY STEEL COMPANY.

320 Broadway, New York.

Capital Stock.....$500,000.
Shares....$100 each.

$500.00.

This is to Certify that John G. Wymond has paid into the treasury of the Harvey Steel Company the sum of Five Hundred Dollars in full payment for Five Shares of its Common Stock, duly executed certificates for which will be issued to his order upon surrender of this receipt, so soon as said certificates are ready for delivery.

Chicago, Ill., August 15, 1908. NATHAN H. BEEBOHN, Treasurer.

Temporary certificates of stock when issued are in the general form of the permanent certificate but reference is made in the body of the instrument to its temporary character, and the certificate itself is usually printed or otherwise prepared at a small cost in keeping with its temporary nature.

Form 12.—Temporary Stock Certificate.

Temporary Certificate No. 35.

For: 10 shares.
Dated: September 10, 1908.
Issued to:
Bradford M. Jones,
35 Mountain Road,
Arlington, Mass.
Issued against surrendered Certificate No. (Original issue.)

Received the above certificate this 15th day of September, 1908.
BRADFORD M. JONES.
This Temporary Certificate No. 35 cancelled November 1, 1908.
Permanent Certificates issued in its stead as follows:
No. 75 for 10 Shares
No..... " .....
No..... " .....

No. 35. Shares, 10.

TEMPORARY CERTIFICATE.

ARLINGTON CERAMIC COMPANY.

Organized under the Laws of Massachusetts.

Capital Stock, $50,000.

THIS IS TO CERTIFY that Bradford M. Jones is the owner of Ten Shares of the Capital Stock of the Arlington Ceramic Company, full-paid and non-assessable, permanent certificates for which will be issued to the order of the said owner, so soon as ready for delivery, upon surrender of this certificate.

Said stock is transferable only on the books of the Company by the owner thereof in person or by his duly authorized attorney, upon surrender of this certificate, properly endorsed.

{ CORPORATE SEAL. }

Witness the seal of the Company and the signatures of its duly authorized officers affixed at Arlington, Massachusetts, this 10th day of September, 1908.

HARVEY M. CORNELL, Secretary.
MARTIN H. SPENCER, President.

SHARES, $100 EACH.

(c) ASSIGNMENT OF STOCK SUBSCRIPTIONS.

Subscriptions, or when payments have been made the partly paid stock represented thereby, may be assigned in whole or in part as may any other contract right or property, unless otherwise expressly provided by the statutes of the state or by some other competent authority. If no payments have been made, the following assignment form may be used.

Form 13.—Assignment of Subscription. No Payments.

For Value Received, I hereby sell, assign and transfer to John H. McLane of New York City, my subscription rights to Twenty-five (25) Shares of the Capital Stock of the Richmond Paper Mills Company, and I do hereby authorize and instruct the proper officers of said Company upon completion of the conditions of my said subscription, to issue said stock to the order of my said assignee.

PATRICK H. MCGUFFY.

New York, September 10, 1908.
In the presence of:
HENRY H. SINCLAIR.

If payments have been made on the subscription and are evidenced by treasurer's receipts or by instalment scrip, the subscription and the payments thereon might be conveyed by one blanket assignment, though a separate assignment of each receipt is usually preferable. The form of blanket assignment is as follows:

Form 14.—Assignment of Subscription. Partly Paid.

For Value Received, I hereby sell, assign and transfer to William M. Stanton of Philadelphia, my subscription rights to Twenty-five (25) Shares of the Capital Stock of the Pacific Coast Development Company together with the payments made thereon aggregating Two Thousand ($2,000) Dollars and evidenced by the attached instalment certificates which are hereby likewise assigned and transferred to the said William M. Stanton, and I do hereby authorize and instruct the proper officers of said Company upon completion of the conditions of my said subscription, to issue said stock to the order of my said assignee.

MAX M. WERLEIN.

Philadelphia, Pa., November 10, 1908.
In the presence of:
JERRY H. MCCALL.

When the subscription rights are transferred by a formal assignment, a very simple endorsement will suffice to convey the receipts by which payments on such subscription are evidenced.

Form 15.—Assignment of Instalment Receipt.

.....

For Value Received, I hereby sell, assign and transfer to William M. Stanton the within receipt and the payments evidenced thereby.

MAX M. WERLEIN.

Philadelphia, Pa., November 10, 1908.

In the presence of:

JERRY H. MCCALL.

CHAPTER XXIII.

FORMS OF STOCK CERTIFICATES.

Stock certificates may be obtained in many different styles and sizes. The lower-priced certificates are usually prepared in quantity with lithographed design and wording, complete save as to the then undetermined data, such as the company name, capital stock, date of issue, name of purchaser, etc., for which blanks are left. The certificates thus partially prepared are supplied to the local printers who, when certificates are ordered by some particular corporation, print in the name, capitalization and other fixed data, leaving blanks for the variable data which can only be filled in at the time of issue, such as the number of shares, name of purchaser and date of issue. The better certificates of this class are neat, attractive and satisfactory.

When a higher grade of certificate with special wording or design is desired, the certificate is lithographed or engraved throughout and a fine quality of bond paper is employed. On the other hand, if the issue is but temporary or the incorporators indifferent, the certificates are printed in the plainest design, or even at times merely written on common paper.

Any certificate which clearly indicates the stock it represents and the ownership of this stock, is legally sufficient regardless of its form and style. As a matter of business, however, and of good taste as well, a neat and presentable certificate is always to be preferred.

It is customary for two of the company officials to sign stock certificates; also for the corporate seal to be affixed. The officers to sign stock certificates are usually designated by the by-laws of the corporation, though in some states they are prescribed by statute. The president is always required to be one of the signing officials, and the secretary or treasurer is designated as the other. When there is no special reason for the selection of the treasurer, the second signing officer is preferably the secretary.

The words "full-paid and non-assessable" should not appear upon the face of a stock certificate unless the corporation has been paid in full for the stock which such certificate represents. (See § 29.) The word "Company" is usually given in full in the title on the stock certificate, though the abbreviation "Co." may be used if preferred. In some states the word "Incorporated" or its abbreviation "Inc." must appear in connection with the name.

Stock certificates are numbered consecutively and are issued in the order of their numbers, not as a matter of legal obligation but merely one of convenience. When the number of certificates to be issued is very large, or other reasons make it desirable, the certificates are sometimes run in series. Thus the first certificate of the first, second and third thousand might be numbered respectively "1," "A1" and "B1."

In the small or "close" corporations, a book of fifty to one hundred stock certificates is usually amply sufficient. In the larger corporations, or smaller corporations where the stock is active, one or more larger books are usually prepared, each containing five hundred or one thousand certificates. For very active stock a number of volumes are frequently required. In such case the serial numbers run up regularly through the volumes, as 1 to 500 in the first volume, 501 to 1,000 in the second, and so on. The

Form 16.—Stock Certificate with Stub. Common Stock.

Certificate No. 125.
For 20 shares.
Dated, September 10, 1908.
Issued to

Howard H. McNeil,
35 William St.,
New York City.

Issued against surrendered Certificate No. 16.

Received the above Certificate this 12th day of September, 1908.

HOWARD H. MCNEIL.

This certificate cancelled.....
190
Certificates issued in its stead as follows:

No.....for.....Share
No..... " ..... "
No..... " ..... "

No. 125. 20 Shares.

Incorporated under the Laws of
The State of New Jersey.

TRENTON ENGRAVING COMPANY.

Capital Stock.....$200,000.
Common Stock...$150,000.
Preferred Stock...$50,000.

Full-paid and Non-assessable.

THIS IS TO CERTIFY that Howard H. McNeil is the owner of Twenty Shares of the Common Capital Stock of the Trenton Engraving Company, transferable only on the books of the Company by the said owner thereof in person or by duly authorized attorney, upon surrender of this Certificate properly endorsed.

{ CORPORATE SEAL. } Witness the Seal of the Company and the signatures of its duly authorized officers affixed in Trenton, New Jersey, this 10th day of September, 1908.

JAMES CORNISH,
Treasurer.

ANGUS MCDONALD,
President.

SHARES, $100 EACH.

binding of the stock certificate book should be durable, as it is one of the permanent records of the corporation.

When preferred stock is issued its certificates are also numbered from "1" up and are usually bound in a separate volume. If, however, only a few certificates are required, they are sometimes bound up with the certificates of common stock as a separate division of the book, the numbering of each kind of certificate being entirely separate and distinct.

The certificate and stub given in Form 16 will be found legally correct. The signatures follow the requirements of the New Jersey statutes, which provide that stock certificates must be signed by the president and treasurer. The receipt on its stub is signed by the party to whom the certificate is delivered, who may or may not be the party in whose name it is issued. (See § 38.) When sent to parties at a distance, certificates should either be sent by registered mail or by express, in this latter case accompanied by a receipt to be signed before the certificate is delivered. In either case the receipt which is returned is pasted to the proper stub in the stock certificate book.

Form 17.—Stock Certificate Stub. Common Form.

.....

Certificate No. 125
For 20 Shares.
Issued to
Howard H. McNeil,
35 William St.,
New York.
Dated, September 10, 1908.
From Whom Transferred,
James H. Stanley.
Dated, January 1, 1908.

NO. ORIGINAL CERTIFICATE.	NO. ORIGINAL SHARES.	NO. OF SHARES TRANSFERRED.
16	20	20

Received Certificate No. 125 for 20 Shares, this 12th day of September, 1908.
HOWARD H. MCNEIL.

When a certificate represents an original issue, on its stub under the heading "Issued against surrendered certificate No....." should be entered the statement "Original Issue."

The foregoing somewhat complicated form of stub (Form 17) is given merely because it is frequently encountered and is difficult to understand and use without illustration. The data of this stub are the same as appear on the preceding certificate and stub (Form 16), but in addition thereto appears—somewhat unnecessarily—the name of the transferrer, the date of issue of his certificate and the number of shares it represented.

If nothing appears on the face of a stock certificate to the contrary, it represents common stock. If the company issues preferred stock, this fact should be shown by both the common and preferred stock certificates and the kind of stock represented by the particular certificate should appear unmistakably on its face. Usually the term "Common Stock" or "Preferred Stock," as the case may be, is stamped, printed or lithographed prominently across the face of each certificate.

Form 18.—Preferred Stock Certificate.

....

No. 35. 25 Shares.

Incorporated under the Laws of
The State of New York.
HOWARD BANK NOTE COMPANY.

Capital Stock.....$500,000.
Common Stock....$400,000.
Preferred Stock....$100,000.

Full-paid and Non-assessable.

THIS IS TO CERTIFY that Henry J. McVeigh is the owner of Twenty-five Shares of the Preferred Capital Stock of the Howard Bank Note Company, transferable only on the books of the Company by the said owner, in person or by duly authorized attorney, upon surrender of this Certificate properly endorsed.

The Preferred Stock represented by this Certificate is entitled to an annual cumulative dividend of Five (5%) Per Cent., payable out of net profits before any dividend is paid upon the Common Stock of the Company. Should the net profits in any year be insufficient to pay said preferred dividend, either in whole or in part, any unpaid portion thereof shall become a charge against the net profits of the Company and shall be paid in full out of said net profits before any dividends are paid upon the Common Stock. After the Common Stock in any year shall have also received a dividend of Five (5%) Per Cent., both the Preferred and Common Stock shall participate equally in any further dividends that may be declared in that year.

On liquidation of the Company said Preferred Stock shall receive any unpaid dividends accrued thereon and shall receive payment of its full par value of One Hundred ($100) Dollars per share from the assets of the Company before anything is paid therefrom to the Common Stock, but shall not participate further in the distribution of said assets.

{ CORPORATE SEAL. } Witness the Seal of the Company and the signatures of its duly authorized officers, this first day of October, 1908.

EDWIN T. HOWARD, President. JOHN J. HOWARD, Secretary.

SHARES, $100 EACH.

.....

Preferred stock certificates are of the same general form as certificates for common stock but must show upon the face of the certificate the conditions under which the preferred stock is issued. In many states this is a statute requirement. In some few states the conditions of preferred stock must appear upon the certificates of both preferred and common stock.

The stubs of preferred stock certificates are the same in form as those of common stock certificates. Properly they should be headed "Preferred Stock," but the requirement is usually disregarded.

When the conditions of preferred stock are lengthy, their full statement is frequently omitted from the face of the certificate—if the statutes of the particular state permit—and reference is made to the charter or by-law provision by which the preferred stock is created. In such case the second, third and fourth paragraphs of the certificate given under Form 18 would be omitted and their place be taken by a new paragraph stating:

"Said stock is part of an issue of One Hundred Thousand ($100,000) Dollars par value of Preferred Stock authorized by the Certificate of Incorporation of the said Company as filed in the office of the Secretary of State of New York on the 5th day of August, 1908, and is issued under the terms and conditions therein set forth."

Certificates of preferred stock are sometimes issued in very crude form, the ordinary certificate being used, with the statement that it represents preferred stock and the conditions under which such preferred stock is issued, or the reference to the authority under which it is issued, printed across its face in red or some other distinctive style.

Transfers of Stock.

Stock is transferred by assignment, the form for which is printed or lithographed upon the back of the certificate. The assignment form which follows is almost invariably employed, and while informal and incomplete in some respects, is sufficient. The form as shown is in the partially completed condition known as an assignment in blank. (See § 38.)

Form 19.—Assignment of Stock Certificate. In Blank.

.....

For Value Received.....hereby sell, assign and transfer unto .....Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint.....my Attorney to transfer the said stock on the books of the within-named Company, with full power of substitution in the premises.

ELLIS K. DOYLE.

Dated..... 190

In presence of:

CHARLES T. ESTABROOK.

.....

When the owner of a certificate assigned in blank wishes to become the owner of record of the stock it represents, he completes the assignment by the insertion of his

own name as in the following form. He may or may not fill in the name of his attorney at his discretion. (See § 38.)

Form 20.—Assignment of Stock Certificate. Complete.

.....

For Value Received, I hereby sell, assign and transfer unto Martin T. Marshall, of New York City, Twenty-five (25) Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint Chester A. Slater my Attorney to transfer the said stock on the books of the within-named Company, with full power of substitution in the premises.

ELLIS K. DOYLE.

Dated, October 1, 1908.
In presence of:
CHARLES T. ESTABROOK.

.....

When assigned certificates are surrendered to the secretary of the corporation for cancellation, it frequently happens that an immediate transfer and reissue is impossible. In such case the secretary should give a receipt for the surrendered certificates. He may then transfer and reissue them at his convenience. The following is a receipt of this nature.

Form 21.—Secretary's Receipt for Stock Certificates.

.....

CARROLL MILLING COMPANY.

Received from Harvey J. McConnell the following duly assigned certificates for transfer and reissue:

NUMBER.	OWNER OF RECORD.	SHARES.
245	John A. Brown.....	35
595	Henry Ackers	20
235	John H. Carroll.....	100

HOWARD MCMASTERS,
Secretary.

CHAPTER XXIV.

CHARTER FORMS.

The charter or certificate of incorporation—the terms are legally synonymous—is the instrument which brings the corporation into existence and from which most of its powers are derived. It should be drawn by a competent attorney familiar with its possibilities and capable of adjusting these to the needs of the particular corporation. (See Ch. II, "The Charter.")

The general form and requisites of the charter are much the same in all parts of the Union but the details differ in compliance with statutory requirements in almost every state. (See § 11.) The charter forms which follow illustrate this variation.

The charter is prepared and executed in duplicate or triplicate. One of these copies is usually filed with the state authorities, one with the local authorities, and one, as a matter of course, is retained for the files of the corporation. Usually a copy certified by the Secretary of State or other competent authority, is preferred for the corporate files. Save in case of litigation, however, such certification is not essential.

The forms which follow, while taken from charters of existing corporations, are included here merely to exemplify the numerous references to the charter in the present volume. For larger or more complex incorporations the charter is usually much expanded by amplification of its purposes and by inclusion of special provisions.

Form 22.—New York Charter.

.....

CERTIFICATE OF INCORPORATION
of the
MICROMETER SCALE COMPANY.

We, the undersigned, all being of full age and two-thirds being citizens of the United States and one of us a resident of the State of New York, for the purpose of forming a corporation under the Business Corporations Law of the State of New York, do hereby certify and set forth:

First.—The name of said corporation shall me

"MICROMETER SCALE COMPANY."

Second.—The purposes for which said corporation is to be formed are as follows:

(1) To manufacture, buy, sell, import, export and generally deal in and with scales, weighing machines and mechanical devices for weighing, measuring and recording the weight and measurement of all kinds of goods and merchandise.

(2) To acquire patent rights throughout the world for the inventions of Wilhelm Simonsson, as far as they relate to weighing and measuring mechanisms, and to manufacture under the same and to use, sell, lease and otherwise dispose of the mechanisms so manufactured, and to sell, let on royalty, grant licenses in respect of, and otherwise turn to account and profit the patent rights so acquired.

(3) To apply for, obtain, purchase or otherwise acquire and to register, hold, own, use, operate, sell, assign or otherwise dispose of and turn to account and profit, any and all trade-marks, improvements, inventions, tools, apparatus, mechanisms and machinery, useful or necessary in the operations of the Company, whether secured under letters patent of the United States or of any foreign country, or held or secured in any other manner.

(4) To take, lease, purchase, hire or otherwise acquire and to hold, use, sell, lease, exchange, mortgage, improve and develop real estate, real property and any interest or right therein, and to construct or have constructed, houses, buildings, store-houses, factories, works, plants and structures of every description, and to buy, sell, own, use, manage, operate and lease the same or similar structures.

(5) To take, lease, hire, purchase, manufacture or otherwise acquire and own, and to sell, hire, lease, pledge, mortgage and otherwise deal in and with all kinds of goods, wares, chattels, merchandise, and other personal property, excepting gold and silver bullion, foreign coins and bills of exchange.

(6) To conduct any other business permissible under the Business Corporations Law of the State of New York, manufacturing or otherwise, which may be carried on to advantage in connection with or in addition to the specified purposes of the corporation.

Third.—The amount of capital stock of said corporation shall be Five Hundred Thousand ($500,000) Dollars.

The amount of capital with which said corporation will begin business is Five Hundred ($500) Dollars.

Fourth.—The number of shares of which said capital stock is to consist shall be Five Thousand (5,000) Shares of the par value of One Hundred ($100) Dollars each.

Fifth.—The principal office of the corporation shall be in the Borough of Manhattan and in the City, County and State of New York.

Sixth.—The duration of said corporation shall be perpetual.

Seventh.—The number of directors of said corporation shall be seven.

Eighth.—The names and post-office addresses of the directors for the first year as as follows:

NAMES.	ADDRESSES.
Howard Maxwell	510 West 176th Street, New York City.
Howard J. McCall	270 Broadway, New York City.
Edward Blashfield	30 Broad Street, New York City.
James H. McLane	30 Broad Street, New York City.
Howard H. Thomas	Montclair, New Jersey.
Lewis H. Glass	Oyster Bay, L. I., New York.
Leonard H. Matthews	Hartford, Connecticut.

Ninth.—The names and post-office addresses of the subscribers to this certificate and the number of shares which each agrees to take in said corporation, are as follows:

NAMES.	ADDRESSES.	SHARES.
Howard Maxwell	510 West 176th Street, New York City	460
Howard J. McCall	270 Broadway, New York City	20
Edward Blashfield	30 Broad Street, New York City	20

Tenth.—Pursuant to Section 40 of the Stock Corporation Law as amended, this corporation shall have power to purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and issue in exchange therefor its stock, bonds or other obligations.

Eleventh.—At all elections of directors of this corporation, each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock, multiplied by the number of directors to be elected, and he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two or more of them as he may see fit.

IN WITNESS WHEREOF, we have made and signed this Certificate in triplicate, this 27th day of August, in the year One Thousand, Nine Hundred and Eight.

HOWARD MAXWELL.
HOWARD J. MCCALL.
EDWARD BLASHFIELD.

STATE OF NEW YORK, }
County of New York, } *ss.:*

Personally appeared before me this 27th day of August, 1908, Howard Maxwell, Howard J. McCall and Edward Blashfield, to me personally known to be the persons described in and who executed the foregoing certificate, and severally acknowledged that they executed the same for the purposes therein set forth.

{ NOTARIAL SEAL. }

OSCAR JACOBS,
Notary Public, Suffolk County, N. Y.
Certificate filed in New York County.

.....

The essential features of a New Jersey charter are the same as for a New York charter, but the form is varied by the requirements of the state statutes.

Form 23.—New Jersey Charter.

.....

CERTIFICATE OF INCORPORATION
of the
STERLING ICE COMPANY.

We, the undersigned, for the purpose of forming a corporation under and by virtue of the provisions of an Act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," and the several supplements thereto and acts amendatory thereof, do hereby severally subscribe for and agree to take the number of shares of stock of said corporation hereinafter placed opposite our respective names and do certify and set forth as follows:

First.—The name of said corporation shall be

"STERLING ICE COMPANY."

Second.—The location of its principal office in the State of New Jersey shall be at No. 275 Montgomery Street, Jersey City. The name of the agent who shall be therein and in charge thereof upon whom process against this corporation shall be served, is John H. Welch.

Third.—The objects for which this corporation is formed are:

(Purposes.)

Fourth.—The total authorized stock of the corporation shall be Two Hundred and Fifty Thousand ($250,000) Dollars, divided into Two Thousand, Five Hundred (2,500) Shares of the par value of One Hundred ($100) Dollars each, and the amount of Capital Stock with which said corporation will begin business is One Thousand ($1,000) Dollars. Of said Capital Stock One Thousand, Five Hundred (1,500) Shares shall be Common Stock and One Thousand (1,000) Shares shall be Preferred Stock.

Such Preferred Stock shall after January 1st, 1909, be entitled to a preferential, cumulative, annual dividend of Six (6%) Per Cent., payable on or before the 31st day of December of each year from the surplus profits of the Company, and after the Common Stock of the Company shall have received a like dividend, shall participate with the Common Stock in all further dividends declared in that year above Six (6%) Per Cent. and up to but not exceeding Twelve (12%) Per Cent. but no further.

Fifth.—The names and post-office addresses of the incorporators and the number of shares subscribed for by each, are as follows:

NAMES.	ADDRESSES.	SHARES.
Harry H. Sterling	275 Montgomery St., Jersey City, N. J.	5
Edward Penfold	" " " " " "	3
Oscar McComb	" " " " " "	2
James Hamilton	" " " " " "	2

Sixth.—The period of existence of said corporation shall be unlimited.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 31st day of August, A. D., One Thousand, Nine Hundred and Eight.

HARRY H. STERLING. (L. S.)
EDWARD PENFOLD. (L. S.)
OSCAR MCCOMB. (L. S.)
JAMES HAMILTON. (L. S.)

In the presence of:
HOWARD MASTERSON.
ROBERT BENJAMIN.

(*Acknowledgment.*)

CHAPTER XXV.

BY-LAW FORMS.

As the general corporate mechanism is much the same in all corporations, there is a general resemblance between their by-laws. The details of these by-laws should, however, in each case be adapted to the special requirements of the corporation for which they are prepared. (See Ch. III, "The By-Laws.")

The set of by-laws which follows, though more particularly intended to illustrate the many references of the present volume to the by-laws, has been proved by long experience and will afford very excellent material from which to construct the by-laws of any particular corporation.[1] The set, though concise, is perhaps more complete than is entirely necessary for the smaller corporations. It is, however, far better for by-laws—if properly adapted to the needs of the particular corporation—to err on the side of completeness than of insufficiency.

Certain features of the by-laws given are required by the New York statutes. These features have for the most part been indicated and must be omitted or modified to meet the varying statutory provisions when the by-laws are used in other states.

As a matter of convenience, by-laws are usually recorded in the first part of the minute book immediately following a similarly recorded copy of the charter. (See Ch. XXIV.)

[1] More extended sets of by-laws suitable for the larger corporations may be found in the author's work, "Corporate Organization," pages 310-330.

Form 24.—By-Laws.

.....

BY-LAWS
of the
NEW YORK CONSTRUCTION COMPANY.

ARTICLE I.—STOCK.[3]

1. *Certificates of Stock* shall be in form approved by the Board of Directors; shall be numbered consecutively; be issued in numerical order from the stock certificate book; be signed by the President and Secretary, and be sealed with the corporate seal. A record of each certificate issued shall be kept on the stub thereof.

2. *Transfers of Stock* shall be made only upon the books of the Company, and before a new certificate is issued, the old certificate properly endorsed shall be surrendered. Surrendered certificates shall be cancelled and be attached to their proper stubs in the stock certificate book. The stock books of the Company shall be closed to transfers twenty days before general elections and ten days before dividend days.

3. *The Treasury Stock* of the Company shall include such issued and outstanding stock of the Company as may be acquired by purchase, donation or otherwise and shall be held subject to disposal by the Board of Directors. Such stock shall neither vote nor participate in dividends while held by the Company.

ARTICLE II.—STOCKHOLDERS.

1. *The Annual Meeting* of the stockholders of the Company shall be held in the principal office of the Company in New York City at 10 o'clock A. M. on the 3rd Monday of January of each year—if not a legal holiday; but if a legal holiday, then on the next business day succeeding —for the purpose of electing directors and the transaction of such other business as may be brought before the meeting.

2. *Special Meetings* of the stockholders shall be held at the principal office of the Company and may be called by the President at his discretion and must be called by him when so directed by resolution of the Board of Directors, or when requested thereto in writing by stockholders holding one-third of the outstanding stock.

3. *Notice of Meetings*, written or printed, for every annual or special meeting of the stockholders shall be prepared and mailed to the post-office address of each stockholder as shown by the stock books of the Company not less than ten days before such meeting, and if for a special meeting such notice shall state the object or objects thereof, and no other business shall be transacted at any such special meetings save that so notified.[3] No notice need be given of adjourned meetings.

4. *A Quorum* at any meeting of the stockholders, save as otherwise prescribed by statute,[4] shall consist of a majority of the voting stock of the Company represented in person or by written proxy. A majority of such quorum shall be necessary to decide any question coming before the meeting. If a quorum is not present at any duly called meeting, a majority of those present may adjourn the meeting from day to day, but until a quorum is secured may transact no business.

5. *Voting at Elections* of Directors shall be by ballot, and shall also be by ballot on any other matter submitted to a stockholders' meeting

[3] If preferred stock is created by by-law provision, the section devoted to it should appear under Article I.

when so requested by not less than one-fourth in interest of the stockholders present at such meeting. Each stockholder shall be entitled to one vote for each share of stock held by him and such vote may be cast in person or by written proxy.

6. *The Election of Directors* shall be held at the annual meeting of stockholders and shall be conducted by two inspectors of election appointed, after the first election, by the President.[5]

7. *The Presiding Officer* at meetings of stockholders shall be the President, or in his absence or disability, the Vice-President. In the absence or disability of both of these officers, a Chairman shall be chosen by the stockholders present and shall preside at such meeting. In the absence of the Secretary of the Company, the presiding officer shall appoint a Secretary *pro tem.*

8. *The Order of Business* at the annual meeting and as far as possible at all other meetings of the stockholders, shall be:

1. Reading and Disposal of Any Unapproved Minutes.
2. Annual Reports of Officers and Committees.
3. Election of Directors.
4. Unfinished Business.
5. New Business.
6. Adjournment.

ARTICLE III.—DIRECTORS.

1. *The Business and Property* of the Company shall be managed by a Board of Seven (7) Directors, who shall be stockholders continuously during their respective terms of office and who shall be elected annually by ballot by the stockholders for the term of one year and shall serve until the election of their successors. Any vacancies in the Board may be filled by the remaining members of the Board for the unexpired term or terms. Directors shall receive no compensation for their services. Absence from four successive regular meetings of the Board of Directors may, in the discretion of the Board, terminate the membership of the absent director.

2. *The Regular Meetings* of the Board of Directors shall be held in the principal office of the Company in New York City at 3 P. M. on the third Tuesday of each month if not a legal holiday; but if a legal holiday, then on the next succeeding business day.

3. *Special Meetings* of the Board of Directors, to be held in the principal office of the Company in New York City, may be called at any time by the President or by any three members of the Board, or may be held at any time and place without notice and for the transaction of any business by unanimous written consent of all the members or by the presence of all the members at such meeting.

4. *Notices* of both regular and special meetings[6] shall be mailed by the Secretary to each member of the Board not less than five days before any such meeting, and notices of special meetings shall state the purpose thereof, and no other business shall be transacted at a special meeting save as so notified unless by unanimous consent of all the members. No notice need be given of adjourned meetings.

[3] It is sometimes provided that no failure or irregularity of notice shall invalidate the annual meeting or any proceedings thereat. In New York annual meetings require two weeks' notice by publication; also the notice to be given for certain special meetings, such as to mortgage corporate property, to create preferred stock, etc., is prescribed by statute.

[4] Special quorums are prescribed in many states for special actions, as amendment of charter, etc. In New York the statutes provide that at meetings for election of directors the stockholders present constitute a quorum without regard to their number.

[5] Inspectors for first meeting are in New York appointed by the board of directors.

5. *A Quorum* at any meeting shall consist of a majority of the entire membership of the Board. A majority of such quorum shall be necessary to decide any question that may come before the meeting. If a quorum is not present at any duly assembled meeting, a majority of those present may adjourn the meeting from day to day but may transact no other business until a quorum is secured.

6. *Voting.* Each member of the Board present in person at any meeting shall have one vote upon all matters voted upon at such meeting.

7. *The Presiding Officer* at meetings of the Directors shall be the President, or in his absence or disability, the Vice-President. In the absence or disability of both these officers, the directors present at any meeting shall appoint a chairman who shall preside at such meeting. In the absence of the Secretary of the Company, the presiding officer shall appoint a Secretary *pro tem.*

8. *Officers* of the Company shall be elected by the Board of Directors at their first meeting after the election of Directors each year. If any office becomes vacant during the year, the Board of Directors shall fill the same for the unexpired term. The Board of Directors shall fix the compensation of the officers and agents of the Company. An officer may be removed at any time by a two-thirds vote of the entire membership of the Board.

9. *The Order of Business* at any regular meeting or special meeting of the Board of Directors shall be:

1. Reading and Disposal of Any Unapproved Minutes.
2. Reports of Officers and Committees.
3. Unfinished Business.
4. New Business.
5. Adjournment.

ARTICLE IV.—OFFICERS.

1. *The Officers* of the Company shall be a President, who shall be elected from among the directors, a Vice-President, a Secretary and a Treasurer, all of whom shall be elected for one year and shall hold office until their successors are elected and qualify. The positions of Secretary and Treasurer may be united in one person.

2. *The President* shall preside at meetings of stockholders and of directors; shall have general supervision of the affairs of the Company; shall sign or countersign all certificates, contracts and other instruments of the Company as authorized by the Board of Directors; shall make reports to the directors and stockholders, and perform all such other duties as are incident to his office or are properly required of him by the Board of Directors. In the absence or disability of the President, the Vice-President shall exercise all his functions.

3. *The Secretary* shall issue notices for all meetings of both stockholders and directors; shall keep their minutes; shall have charge of the seal and the corporate stock books; shall sign with the President all instruments requiring such signature, and shall make such reports and perform such other duties as are incident to his office or are properly required of him by the Board of Directors.

4. *The Treasurer* shall have the custody of all moneys and securities of the Company and shall keep regular books of account and balance the same each month. He shall sign or countersign such instruments as require his signature; shall perform all duties incident to his office or that are properly required of him by the Board, and shall give bond for the faithful performance of his duties in such sum and with such sureties as may be required by the Board of Directors.

• It is sometimes provided that no notice shall be given of regular meeting of directors. For the ordinary corporation such a provision is hardly advisable.

ARTICLE V.—DIVIDENDS AND FINANCE.

1. *Dividends* shall be declared only from surplus profits at such times as the Board of Directors shall direct, and no dividend shall be declared that will impair the capital of the Company.

2. *The Moneys* of the Company shall be deposited in the name of the Company in such bank or trust company as the Board of Directors shall designate, and shall be drawn out only by check signed by the Treasurer and countersigned by the President.

ARTICLE VI.—SEAL.

1. *The Corporate Seal* of the Company shall consist of two concentric circles, between which appears the name of the Company, and in the centre shall be inscribed "Incorporated 1908, New York," and such seal, as impressed on the margin hereof, is hereby adopted as the Corporate Seal of the Company.

ARTICLE VII.—AMENDMENTS.

1. *These By-Laws* may be amended, repealed or altered, in whole or in part, by a majority vote of the entire outstanding stock of the Company, at any regular meeting of the stockholders, or at any special meeting where such action has been announced in the call and notice of such meeting.

2. *The Board of Directors* may adopt additional by-laws in harmony therewith, but shall not alter nor repeal any by-laws adopted by the stockholders of the Company.

.....

Certification of the by-laws as they appear in the minute book, though usual, is not essential. Such certification when desired should immediately follow the by-laws and be in the following general form.

Form 25.—Certification of By-Laws.

.....

We, the undersigned, President and Secretary of the New York Construction Company, do hereby certify that the foregoing are the By-laws of the said corporation duly adopted by the stockholders thereof, at their first meeting held in the City of New York, on the 10th day of October, 1908, all as shown by the Minutes of said meeting.

IN WITNESS WHEREOF, we have hereunto affixed our official signatures and the corporate seal of said corporation on this 15th day of October, 1908.

{ CORPORATE SEAL. }

JAMES T. HOLDEN, President.
EVERETT A. BARRETT, Secretary.

CHAPTER XXVI.

EXCHANGE OF PROPERTY FOR STOCK.

When a corporation is organized to take over property, giving its stock in exchange, the matter is conveniently brought up for consideration by means of a formal proposition addressed to the company by the owner of the property. Sometimes, instead, a proposed form of agreement between the owner of the property and the corporation covering the details of the exchange is submitted for consideration and action.

In either case the matter is usually presented to and approved by the stockholders at their first meeting. Final action is then taken by the board of directors. The directors have power to act without previous authorization by the stockholders, but as the matter is an important one, a stockholders' authorization, by which they are estopped from any future objections, is considered a desirable preliminary to the directors' acceptance.

The usual form of proposition for exchange of property for stock involves the issue of the entire stock of the company in payment for the property offered. This is usually desired but, as a certain portion of the stock has already been subscribed for by the incorporators, either the subscribed stock must be excluded or some adjustment of the incorporators' subscriptions must be made.

A simple method of arranging the matter is for the owner of the property to make some mutually satisfactory arrangement with the incorporators for the payment by him of their subscriptions. (See Form 26.) This is entirely legitimate so far as the corporation is concerned, as it is a matter of indifference to the company whether subscriptions are paid by the subscribers themselves or by someone else for them.

Another method is for the incorporators to formally assign their subscriptions to the person making the proposition. (See Form 27.) In such event, it must be remembered that as soon as the assignment becomes effective, the incorporators are no longer stockholders of the company and cannot act as such unless some other arrangement is made for their qualification.

In view of recent decisions and dicta it is not advisable to incorporate in the proposition any agreement for donation of stock to the treasury of the company.[1]

Form 26.—Proposition to Exchange Property for Stock.

.....

STERLING ICE COMPANY,
275 Montgomery Street,
Jersey City, N. J.

GENTLEMEN:—

I hereby offer your Company in exchange and full payment for its entire capital stock—including by agreement of the incorporators the shares subscribed by them—the entire rights and letters patent, domestic and foreign, for all my inventions pertaining to (1) the manufacture of ice, (2) refrigeration, and (3) mechanisms and processes to be used in connection therewith.

In event of your acceptance of this offer, I will at once assign to the Company all United States rights, letters patent and applications therefor, and all foreign rights for my said inventions, and will from time to time execute all such further instruments as may be necessary or desirable to vest fully in your Company the ownership of my said inventions.

I will also assign to your Company any further inventions relating to the manufacture of ice, or to refrigeration, or to mechanisms and processes to be used in connection therewith, which may be made by me within five years from the date of your acceptance of this proposition, either assigning the rights before patent applications are made therefor, or assigning the patents after issue of the same. I will also turn over to the Company all models, drawings and data pertaining to my said inventions.

It is a condition of this proposition that the Company shall refund to me my actual expenditures to date for models, drawings and letters patent, as per statement and vouchers to be submitted on demand, said expenditures amounting in all to the sum of $5,245.43.

If this offer is accepted, the stock subscribed for by Messrs. Harry H. Sterling, Edward Penfold, Oscar McComb and James Hamilton is to

[1] See v. Heppenheimer, 69 N. J. Eq. 36 (1905); Knickerbocker, etc. Co. v. Assessors, 74 N. J. L. 583 (1907).

be issued to them or their order; the balance of the stock of the Company to my order; all said stock to be issued full-paid and non-assessable.

Yours very truly,

EDWARD DUMONT.

New York, September 2nd, 1908.

.....

(See Forms 37, 38.)

If an assignment of the incorporators' subscription is deemed preferable, the following form may be used.

Form 27.—Assignment of Incorporators' Subscriptions.

.....

We, the undersigned, being all the incorporators of the Leroy Manufacturing Company, in consideration of the sum of One Dollar to each of us in hand paid, the receipt whereof is hereby acknowledged, and for other good and valuable considerations, do hereby sell, assign and make over unto Albert H. Hardin the stock of the Leroy Manufacturing Company respectively subscribed for by us, and do hereby authorize and instruct the officers of said Company to issue said stock to the order of said Albert H. Hardin upon completion of the terms of our subscriptions.

This assignment is conditioned upon the acceptance by said Leroy Manufacturing Company of said Hardin's proposition of this date to exchange property for the entire capital stock of said Company, and after said acceptance is not to be effective until in pursuance thereof the said Hardin has made due and formal tender of payment for said capital stock according to the terms of his said proposition.

Witness our hands and seals this 10th day of September, 1908.

WILLIAM MCCALL. (L. S.)
FRANK H. FLYNN. (L. S.)
ROBERT H. STERLING. (L. S.)

In the presence of
HOWARD H. FLINT.

.....

This assignment when employed is usually either written on the same sheet or sheets as the proposition for exchange of property for stock, or otherwise is attached thereto. Under its conditions the incorporators cannot lose their qualifying stock until after the first meetings.

The following stockholders' resolution approving the exchange of property for stock is in pursuance of the proposition of Form 26.

Form 28.—Stockholders' Resolution. Property for Stock.

.....

WHEREAS, A proposition has been received from Edward Dumont offering to sell, assign and convey to this Company certain rights and letters patent, domestic and foreign, for his inventions pertaining to the manufacture of ice, to refrigeration, and to mechanisms and processes to be used in connection therewith, in exchange for the entire capital stock of the Company, to be issued full-paid and non-assessable to the order of the said Edward Dumont, all as set forth in said proposition; and

WHEREAS, It appears to the stockholders of this Company that the said inventions are desirable for the purposes of the Company and are reasonably worth the stated purchase price thereof:

NOW, THEREFORE, BE IT RESOLVED, That the exchange of said rights, patents and inventions for the entire capital stock of this Company, on the terms and conditions set forth in said proposition, be and hereby is approved, and the Board of Directors of this Company are hereby authorized, empowered and instructed to accept the said proposition, to receive the rights and patents offered therein, and to cause the entire capital stock of the company to be issued in payment therefor.

.....

(See Stockholders' Minutes, Form 37.)

After approval by the stockholders, the proposition is submitted to the board of directors, usually accompanied by a copy of the stockholders' resolution, and the board in its turn adopts a resolution of acceptance.

Form 29.—Directors' Resolution. Property for Stock.

.....

WHEREAS, Certain letters patent and certain rights, domestic and foreign, for the inventions of Edward Dumont pertaining to the manufacture of ice and to refrigeration, and to mechanisms and processes to be used in connection therewith, are offered to this Company in exchange for its entire capital stock as set forth in a proposition made by the said Edward Dumont to this Company under date of September 2nd, 1908; and

WHEREAS, The exchange of said letters patent and rights for the stock of the Company as contemplated by said proposition, has been approved by the stockholders of this Company; and

WHEREAS, The letters patent and rights so offered are adjudged by this Board to be of the reasonable value of Two Hundred and Fifty Thousand ($250,000) Dollars and to be necessary for the use and lawful purposes of this Company:

NOW, THEREFORE, BE IT RESOLVED, That said proposition be and hereby is accepted in accordance with its terms, and that said letters patent and rights for the inventions of Edward Dumont be received in full payment for the entire capital stock of this Company, and that the President and Treasurer of this Company be and hereby are authorized and directed to receive such duly executed assignments from the said Edward Dumont as

may be necessary to carry into effect the terms of said proposition and to convey to and vest in this Company the entire right and title in and to said inventions, and to issue in exchange therefor the entire capital stock of this Company, full-paid and non-assessable, to the persons designated in said proposition, and the said officers of the Company are further empowered and instructed to do all other things necessary and desirable to consummate the exchange of the said letters patent and rights for the stock of this Company and to carry into effect the terms of said proposition;

PROVIDED, HOWEVER, That the acceptance of the proposition of said Edward Dumont as herein set forth, shall be and is conditioned upon his further granting this Company licenses to use any other inventions already made by him or that may be made by him within the period of five years from this present acceptance, in so far as said inventions are applicable to or may be used in connection with the manufacture of ice or with refrigeration, or with mechanisms or processes to be used in connection therewith.

.....

(See Directors' Minutes, Form 38.)

The assignment executed in pursuance of the foregoing resolutions is given in the following form.

Form 30.—Assignment. Property for Stock.

.....

ASSIGNMENT.

In consideration of the sum of One Dollar paid to me, Edward Dumont of the City of New York, by the Sterling Ice Company, a corporation organized and existing under the laws of the State of New Jersey, the receipt whereof is hereby acknowledged, and for other good and valuable considerations to me moving, I do hereby sell, assign and transfer to the said Sterling Ice Company all my right, title and interest in and to certain new and useful inventions and improvements for the manufacture of ice and for refrigeration, and for mechanisms and processes to be used in connection therewith, all as set forth in and covered by certain applications for patents filed in the Patent Office of the United States as follows:

APPLICATIONS ALLOWED.

Serial No. 895,762, filed August 1, 1907.
" No. 925,644, " October 1, 1907.
" No. 925,962, " November 1, 1907.

APPLICATIONS PENDING.

Serial No. 926,182, filed January 2, 1908.
" No. 928,462, " March 2, 1908.

together with the right, title and interest in and to all other inventions relating to the manufacture of ice, to refrigeration, or to mechanisms or processes to be used in connection therewith, already made by me, or that may be made by me within five years from the 3rd day of September, 1908,

IN AND FOR the following countries:

United States	Italy	Austria
Canada	Australia	Spain
Sweden	New Zealand	Portugal
Norway	Mexico	Japan
Denmark	Great Britain	Brazil
Belgium	France	Argentine Confederation
Switzerland	Germany	Chili

and for all other countries wherein it may be deemed profitable by said Company to patent said inventions;

And I hereby further undertake and agree to grant to the said Company licenses to use any other inventions already made by me or that may be made by me within the said period of five years from the 3rd day of September, 1908, in so far, but only so far as such inventions are applicable to or may be used in connection with the manufacture of ice or with refrigeration, or with mechanisms or processes to be used in connection therewith.

In pursuance of the foregoing assignments, I do hereby authorize and empower the said Company to apply for and take out all such letters patent as may be necessary to secure its rights to the inventions and improvements hereby assigned, and I agree and bind myself to execute and deliver to said Company from time to time all such further instruments of transfer and assignment, and to do all such further things as may be necessary or desirable to enable it to secure said letters patent and to perfect its title to such rights and inventions;

And I hereby authorize and request the officials of the Patent Offices and Departments of the several nations, countries and governments in the territory herein specified, to issue to the said Company, its successors and assigns, any and all letters patent that may be granted for my said inventions;

And I hereby bind myself, my executors and administrators, to do all things herein specified and agreed to be done:

But it is hereby agreed that all further assignments, patent applications, drawings and models furnished by me shall be at the charge and expense of said Company and without cost to me;

And it is further expressly agreed that if within ninety days of written notice from me or my legal representatives of any invention made by me and covered by this present agreement, said Company shall not have taken due and proper steps to secure letters patent therefor in any part of the territory hereinbefore set forth, I or my legal representatives may make application for such letters patent in such unoccupied territory and the said Company shall have no claim or title to the patents so secured.

It is the intent of this assignment to convey to the Sterling Ice Company, its successors and assigns, the entire interest for the whole world in any and all inventions and improvements in mechanisms for the manufacture of ice and for refrigeration, or relating thereto, so far as the same may be applicable, now made by me or that may hereafter be made by me within five years from the 3rd day of September, 1908.

Witness my hand and seal this 5th day of September, 1908.

EDWARD DUMONT. (L. S.)

.....

This assignment is general in its form and carries the rights to the inventions covered by its terms without further specific assignment. In practice, however, individual assignments of each invention for each country would

probably be required for filing in the proper patent office. As a precautionary measure, but not as a matter of necessity, the assignment as given should be acknowledged.

Stock given in exchange for property may either be issued in one or more certificates to the owner of the property, who then breaks up the certificates and distributes the stock as may be necessary, or it may be issued direct to the parties named by him. The procedure in either case is equally effective, as payment to his order is as effective as if made to him direct. If the stock is issued to his order, the owner's instructions to the secretary might be in the following form.

Form 31.—Instructions for Issuance of Stock.

.....

To the Secretary of the
STERLING ICE COMPANY,
Jersey City, N. J.

DEAR SIR:—

Pursuant to the terms of the resolution adopted by the Directors of your Company on September 3rd, 1908, accepting my proposition of September 2nd, 1908, and authorizing the issue of the entire capital stock of said Company, full-paid and non-assessable, to my order, save the shares subscribed for by the incorporators, you are hereby authorized and instructed to issue said stock of the Sterling Ice Company in the following names:

PREFERRED STOCK.	
John Mackey	500 shares.
Edward Dumont	500 "
COMMON STOCK.	
Henry Brown-Ayres	150 shares.
Theodore McFarrell	200 "
Horace H. Wight	150 "
Edward Dumont	988 "

The certificates issued in accordance with the foregoing instructions are to be delivered to me.

Yours very truly,

EDWARD DUMONT.

New York, September 5, 1908.

CHAPTER XXVII.

FORMS FOR FIRST MEETINGS.

(a) CALLS AND WAIVERS.

When its charter is granted, the corporation is a legal entity, entitled to all corporate rights and privileges, but wholly unprovided with the mechanism through which these are ordinarily secured. Primarily the object of the first meetings is to perfect the organization of the corporation and thereby supply this need.

In some few states the charter itself provides for the time and place of the first meeting of stockholders. In some other states the statutes prescribe the method by which it may be called. Unless otherwise prescribed, the first meetings—both of stockholders and directors—are most conveniently and commonly assembled by means of calls and waivers. (See also Ch. XXVIII.)

Calls and waivers should be signed before the time of meeting or at the meeting. Occasionally signatures of parties absent from the meeting are affixed later, and—though the practice is not to be commended—are held to be effective. In the majority of states the incorporators named in the charter are the only parties entitled to attend the first meeting of stockholders and to sign its call and waiver. (See § 58.)

The following form of call and waiver for the first meeting of stockholders will serve for any state. It is simple but sufficient unless specially important action is contemplated.

Form 32.—Call and Waiver. Stockholders'. Short Form.

CALL AND WAIVER OF NOTICE.

FIRST MEETING OF STOCKHOLDERS.

We, the undersigned, all the incorporators and stockholders of the Crystal Spring Water Company, do hereby call the first meeting of the stockholders thereof, to be held in the office of the company at Wanaque, New Jersey, at 10 o'clock A. M. on the 5th day of October, 1908, for the organization of the Company and the transaction of all such other business as may be incident thereto, and we hereby waive all requirements as to notice of such meeting and consent to the transaction thereat of any and all business pertaining to the affairs of the Company.

Wanaque, New Jersey,
October 5, 1908.

HENRY W. HALLOCK.
GEO. W. MCGOWAN.
HARRY H. PARKER.

For the larger corporations or when specially important action is to be taken at the first stockholders' meeting, a more formal call and waiver is frequently desirable, stating specifically the important matters to be considered, as in the following form.

Form 33.—Call and Waiver. Stockholders'. Extended Form.

CALL AND WAIVER OF NOTICE.

FIRST MEETING OF STOCKHOLDERS.

We, the undersigned, all the incorporators of the Sterling Ice Company and all the subscribers to its capital stock entitled to notice of said meeting, do hereby call the first meeting of the stockholders of said corporation to be held in the office of the Company at No. 275 Montgomery St., Jersey City, New Jersey, at 3 o'clock in the afternoon on the 3rd day of September, 1908, for the purpose of receiving the Company's charter, adopting by-laws, electing directors, considering and acting upon a proposition for the issue of the entire capital stock of the Company in exchange for property, and the transaction of all such other business as may be necessary or desirable in connection with the organization or affairs of said corporation, and we do hereby waive all statutory requirements as to notice or publication of the time, place and purposes of this first meeting, and consent to the transaction thereat of any and all business pertaining to the affairs of the Company.

Jersey City, N. J.,
September 3rd, 1908.

HARRY H. STERLING.
EDWARD PENFOLD
OSCAR MCCOMB.
JAMES HAMILTON

When this call and waiver is used in a state where the

directors are appointed by charter provision, as in New York, the reference to election of directors is omitted.

The first meeting of directors is also usually assembled by means of call and waiver. The call is usually formal, stating fully the objects of the meeting but also containing a blanket clause permitting the consideration of any other business relating to the affairs of the company.

Form 34.—Call and Waiver of Notice. Directors'.

CALL AND WAIVER OF NOTICE.

FIRST MEETING OF DIRECTORS.

We, the undersigned, all the directors of the Sterling Ice Company, do hereby call the first meeting of its directors to be held in the office of the Company at No. 275 Montgomery St., Jersey City, New Jersey, at 4 o'clock in the afternoon, on the 3rd day of September, 1908, for the purpose of electing officers of the Company, acting upon a proposition for the issue of the entire capital stock of the Company in exchange for property, and the transaction of all such other business as may be necessary or desirable in connection with the organization of the Company and the promotion of its business, and we hereby waive all statutory and by-law requirements as to notice of time, place and object of this first meeting, and consent to the transaction thereat of any and all business pertaining to the affairs of the Company.

Jersey City, N. J.,
September 3rd, 1908.

HARRY H. STERLING.
EDWARD PENFOLD.
OSCAR MCCOMB.
HENRY BROWN-AYRES.
THEODORE MCCARROLL.

(b) PROXIES.

Proxies for the first meeting of stockholders differ but little from proxies for other meetings, though they are usually limited to the particular meeting and its adjournments. A simple form of proxy legally sufficient for ordinary purposes, is as follows:

Form 35.—Proxy. First Meeting of Stockholders.

PROXY.

FIRST MEETING OF STOCKHOLDERS.

I, the undersigned, an incorporator and a subscriber to the stock of the Holly Rolling Mill Company of New York, hereby appoint George I.

McGowan my true and lawful attorney, with full power of substitution and revocation, to represent me, and to vote in my name, place and stead at the first meeting of the stockholders of said corporation, to be held in the office of John H. McGowan, No. 226 South St., New York City, on the 10th day of October, 1908, at 3 o'clock P. M., and at any adjournment thereof.

Witness my hand and seal this 8th day of October, 1908.

HENRY J. CLIFFORD.

Witnessed by
SAMUEL B. FREMONT.

.....

If a more formal proxy is desirable, the following form may be used.

Form 36.—Formal Proxy. First Meeting of Stockholders.

.....

PROXY.

FIRST MEETING OF STOCKHOLDERS.

KNOW ALL MEN BY THESE PRESENTS:

That I, the undersigned, one of the incorporators and a subscriber to the stock of the Sterling Ice Company of New Jersey, do hereby constitute and appoint Harry H. Sterling my true and lawful attorney with full powers of substitution and revocation, to represent me at the first meeting of the stockholders of said corporation, to be held in the office of the Company, No. 275 Montgomery St., Jersey City, New Jersey, at 3 o'clock in the afternoon, on the 3rd day of September, 1908, and at any meeting postponed or adjourned therefrom, hereby granting my said attorney full power and authority to act for me at said meeting, and, in my name, place and stead, to vote thereat upon the stock of said corporation subscribed for by me or upon which I may then be entitled to vote, in the transaction of any and all business pertaining to the affairs of the Company that may be brought before said meeting, all as fully as I might or could do if personally present, and I hereby ratify and confirm all that my said attorney, or his substitute shall lawfully do at such meeting in my name, place and stead.

IN WITNESS WHEREOF, I have hereunto affixed my signature and seal this 2nd day of September, 1908.

OSCAR MCCOMB. (L. S.)

In the presence of
JASPER T. HARRINGTON.

.....

(For additional forms of proxies see Forms 62-71.)

(c) MINUTES OF FIRST MEETINGS.

As a rule, the first meetings of a new corporation are purely formal. Their minutes are usually prepared before the time of meeting by the attorneys who have the incorporation in charge, and these minutes are followed to the letter.

At the first meeting of the stockholders, which ordinarily precedes the first meeting of directors, the charter is to be received, by-laws are to be adopted, and, save in those states where appointed by the charter, directors are to be elected. The stockholders also usually pass resolutions at their first meeting specially authorizing directors to act on any matters of exceptional importance, such as an exchange of stock for property.

In some states, as New York, the directors for the first year are designated by the charter and have power to adopt by-laws. The preliminary meeting of stockholders then loses much of its importance, but when any specially important action is to be taken by the board, such as an exchange of property for stock, it is still usually held in order to secure the stockholders' approval of such action. (See Ch. XXVI.)

At the first meeting of directors, which usually immediately follows the adjournment of the first meeting of stockholders, officers are to be elected, action is taken on any proposed exchange of stock for property, and provision must be made for the various details necessary to inaugurate the company's operations.

Stockholders' meetings, unless otherwise expressly permitted by statute provision, must be held within the state in which the company has been incorporated. (See § 78.) Where, as is frequently the case, all or a majority of the incorporators reside outside the state of incorporation—as for instance, where citizens of New York organize a company under the laws of Maine or Arizona—the requirement that the first meeting of stockholders must be held within the incorporating state is complied with by means of proxies.

The following minutes follow the requirements of the New Jersey laws, but may be readily adapted for use in any other state.

Form 37.—Minutes. Stockholders'.

STERLING ICE COMPANY.

MINUTES OF FIRST MEETING OF STOCKHOLDERS.
Held September 3rd, 1908.

Pursuant to written Call and Waiver of Notice, the first meeting of the stockholders of the Sterling Ice Company was held in the office of the Company, No. 275 Montgomery Street, Jersey City, New Jersey, at 3 o'clock in the afternoon, on the 3rd day of September, 1908, with all the stockholders present either in person or by proxy.

Mr. Harry H. Sterling called the meeting to order and by motion unanimously carried was appointed temporary Chairman. Mr. Edward Penfold was appointed Secretary *pro tem.*

The following stockholders were present in person or by proxy:

NAME.	NAME OF PROXY.	SHARES SUBSCRIBED.
Harry H. Sterling	(In person)	5
Edward Penfold	" "	3
Oscar McComb	Harry H. Sterling	2
James Hamilton	S. J. Stillman	2

The Secretary presented the Call and Waiver of Notice pursuant to which the meeting was held, duly signed by all the incorporators of the Company. On motion it was ordered entered in the Minute Book immediately following the minutes of the meeting.

The Chairman presented a copy of the Certificate of Incorporation of the Company, stating that the original had been recorded in the office of the Clerk of Hudson County on the 1st day of September, 1908, and was filed in the office of the Secretary of State at Trenton on the same day. On motion the said Certificate of Incorporation was ordered received and entered in full upon the first pages of the Book of Minutes.

The Secretary then presented a form of By-laws prepared by Counsel of the Company, which was read article by article and was, as a whole, unanimously adopted and was ordered entered in full upon the Book of Minutes immediately succeeding the Certificate of Incorporation.

The Chairman announced the next business in order to be the election of five directors as required by the By-laws of the Company, and thereupon appointed Messrs. Warren Clayton and S. J. Stillman Inspectors of Election. Said Inspectors were duly sworn and proceeded to open the polls and receive ballots. (See Forms 101-108.) All the stockholders entitled to vote at said election having voted in person or by proxy, the polls were closed and the Inspectors presented their report showing that ballots were cast as follows:

FOR DIRECTORS.	VOTES.
Harry H. Sterling	12
Edward Penfold	12
Oscar McComb	12
Henry Brown-Ayres	12
Theodore McFarrell	12

The parties designated were thereupon declared the duly elected Directors of the Company. It was ordered that the Oath and Report of the Inspectors be entered in the Minute Book following the minutes of the meeting.

On motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED, That the principal office of the Company in the State of New Jersey shall be at No. 275 Montgomery Street, Jersey City, New Jersey, and the agent in charge thereof upon whom process may be served shall be John H. Welch.

The Secretary then presented a proposition from Edward Dumont of New York City, offering to assign to the Company in exchange for its entire capital stock certain rights and inventions for the manufacture of ice, for refrigeration, and for mechanisms and processes used in connection therewith. (See Form 26.)

Said proposition was ordered received and the following resolution in regard thereto was moved, seconded and unanimously adopted:

(*See Form 28.*)

There being no further business before the meeting, it was adjourned.

HARRY H. STERLING, Chairman.
EDWARD PENFOLD, Secretary.

In pursuance of the instructions of the foregoing minutes, the following instruments are entered in the order given on the Minute Book of the Company preceding the minutes of the present meeting:

1. Certificate of Incorporation. (See Forms 22, 23.)
2. By-Laws. (See Forms 24, 25.)

and the documents given below follow the minutes of the present meeting:

1. Call and Waiver of Notice. (See Forms 32, 33.)
2. Oath and Report of Inspectors of Election. (See Forms 104, 105.)

EDWARD PENFOLD,
Secretary.

The various instruments received during the course of a meeting are frequently ordered embodied in the minutes instead of following them. There is no objection to the arrangement save that it interrupts the continuity of the text.

The proposition for exchange of property for stock might have been entered in full on the stockholders' minutes but is better reserved for inclusion in the minutes of the directors' meeting, where it is finally acted upon. If entered on the minutes of the stockholders' meeting, it should also appear on the minutes of the directors' meeting.

In New York the election of directors is omitted, the directors for the first year having already been appointed by the charter. The formal adoption of the principal office of the company and the appointment of an agent in charge thereof by the stockholders, is peculiar to New

Jersey. The appointment of inspectors of election, who must be sworn, is a New Jersey requirement, but is found in New York and some other states as well.

Form 38.—Minutes. Directors'.

.....

STERLING ICE COMPANY.

MINUTES OF FIRST MEETING OF DIRECTORS.
Held September 3rd, 1908.

Pursuant to written Call and Waiver of Notice, the Board of Directors of the Sterling Ice Company held its first meeting in the office of the Company, No. 275 Montgomery Street, Jersey City, New Jersey, at 4 o'clock in the afternoon, on the 3rd day of September, 1908.

Mr. Harry Sterling was chosen temporary Chairman and called the meeting to order. Mr. Edward Penfold was appointed temporary Secretary.

There were present Messrs. Harry H. Sterling, Edward Penfold, Oscar McComb, Henry Brown-Ayres and Theodore McFarrell, constituting the entire membership of the Board.

The Secretary presented the Call and Waiver of Notice, signed by all the directors, pursuant to which the meeting was held. Said Call and Waiver was ordered spread upon the Minute Book immediately following the minutes of the meeting.

The President then stated that Messrs. Henry Brown-Ayres and Theodore McFarrell had become stockholders of the Company and were therefore qualified to act as its directors by virtue of assignments, executed by him under date of September 3rd, 1908, transferring one share of stock to each of the said parties. Said assignments were thereupon exhibited to the meeting, and, Messrs. Brown-Ayres and McFarrell not voting, were recognized and agreed to by the Board on behalf of the Company.

The Chairman then presented a form of By-laws adopted by the stockholders at their first meeting, and stated that the first business thereunder was the election of a President, Vice-President, Secretary and Treasurer, to serve for the ensuing corporate year and until the election and acceptance of their successors. The following officers were then elected by unanimous vote:

President .....Harry H. Sterling.
Vice-President .....Oscar McComb.
Secretary .....Edward Penfold.
Treasurer .....James Hamilton.

The Secretary-elect having been duly sworn, the permanent officers of the Company took charge of the meeting.

As required by the By-laws, the Treasurer then submitted a bond in the sum of Five Thousand ($5,000) Dollars, signed by himself as principal and by the Fidelity Guarantee Company of Augusta, Maine, as surety. The form and surety of said bond were thereupon approved by the Board, and the bond was ordered received and filed in the custody of the Secretary. (See Form 196.)

The President then presented to the meeting a written proposition from Edward Dumont of New York City (See Form 26), offering to sell and assign to the Company certain rights in and to his inventions relating to the manufacture of ice and to refrigeration, and to mechanisms and processes to be used in connection therewith, all as set forth in said proposition, in exchange and full payment for the entire capital stock of the Company; also a resolution of the stockholders approving the exchange and instructing the Board of Directors to accept the said proposition. (See Form 28.) Mr. Dumont's proposition was thereupon ordered received and spread upon the Minute Book following the minutes of the meeting, and, after some discussion, the following resolution relating thereto was unanimously adopted:

(*See Form 29.*)

The Secretary then presented for approval forms of stock certificates for both common and preferred stock. Upon motion the forms as presented were adopted as the stock certificates of the Company, and the Secretary was instructed to spread said forms upon the Minute Book of the Company following the minutes of the meeting.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED, That the assignment of the inventions of Edward Dumont to this Company in accordance with the terms of his proposition of September 2nd, 1908, and pursuant to the resolution of acceptance thereof adopted at this present meeting, shall, as stipulated in said proposition, be recognized and accepted as payment in full of the stock subscribed for by the incorporators of this Company as set forth in its Certificate of Incorporation.

RESOLVED, That the President and Treasurer be authorized to sell and grant to the Melrose Refrigerating Company, the right to use the Dumont Process in their plant on Staten Island, said Company paying therefor an annual royalty of $2,000.

RESOLVED, That the officers of the Company be hereby authorized to lease an office for the use of the Company at No. 755 Broadway, New York City, at a rental not exceeding Seventy-five ($75) Dollars per month, and that the regular meetings of the Board of Directors shall be held at said office save as otherwise resolved by the Board.

(*See Forms 84, 85 for Resolutions authorizing opening of bank account.*)

Motions as follows were also adopted by unanimous vote:

That the Secretary be authorized and instructed to have prepared five hundred certificates of common stock and five hundred certificates of preferred stock, in the forms adopted by the Board of Directors, and also to provide a corporate seal in the form prescribed by the By-laws of the Company, and that in addition thereto he be authorized and instructed to provide such stock and transfer books, stationery and office supplies as are now necessary for the purposes of the Company.

That the Treasurer be authorized and instructed to pay from the Company's funds all expenses properly incurred in the incorporation of the Company, the total of such payments not to exceed Seven Hundred ($700) Dollars.

That the Treasurer be authorized and instructed to purchase such books of account as are necessary for the proper record of the Company's business operations.

That the Secretary be instructed to prepare the Certificate of Election of directors and officers required by the New Jersey statutes,

and, after its due execution by the proper officers of the Company, to file the same in the office of the Secretary of State of New Jersey within thirty days from date, and that a copy of said Certificate be spread upon the Minute Book following the minutes of the present meeting.

There being no further business before the meeting, it was adjourned.

HARRY H. STERLING, President. EDWARD PENFOLD, Secretary.

In pursuance of the instructions of the preceding minutes, the following are hereunto appended in the order given:

1. Call and Waiver of Notice. (See Form 34.)
2. Secretary's Oath of Office.
3. Written Proposition of Edward Dumont to Exchange Property for the Entire Stock of the Company. (See Form 26.)
4. Forms of Stock Certificates. (See Form 16, 18.)
5. Certificate of Election.

EDWARD PENFOLD, Secretary.

.....

The secretary's oath of office and the report to the Secretary of State are local forms and are not given here. The waiver of notice of assessments by the incorporators, usual in the organization proceedings of New Jersey corporations, is not necessary in the foregoing proceedings, as the stock subscribed for by the incorporators is with their consent included in the stock issued for property and is paid in full thereby.

PART VII.—FORMS RELATING TO MEETINGS.

CHAPTER XXVIII.

CALLS AND WAIVERS.

Regular meetings both of stockholders and directors are held at fixed times usually prescribed by the by-laws. If in the interim between these regular meetings matters arise calling for action, special meetings become necessary. Such meetings are assembled either by the call and waiver, or by a formal call followed by notice.

The call and waiver is a single instrument consisting of two parts; first, a call for the desired meeting and, second, a waiver of all statutory, charter or by-law requirements for notice thereof. (See §§ 96, 98.) This call and waiver must be signed by every person entitled to be present at its meeting. Those signing are thereby estopped from any future objection to the omission of the usual or required formalities of the meeting. No one else has a right to object; hence the call and waiver may be safely used even though the by-laws of the company provide a different method of assembling special meetings.

The call followed by notice is the method of assembling special meetings usually prescribed by the by-laws, and involves the use of two separate instruments; first, the call signed by some competent party or parties and, second, pursuant to this call, a notice of the meeting. (See §§ 96, 97.) The call and waiver permits of an immediate meeting, or a later meeting, according to its terms. The

call with notice involves the delay incident to formal notice, usually ranging from three to ten days. (See Ch. XXIX.)

The first meetings of both stockholders and directors are usually assembled by means of calls and waivers. It is, however, but seldom that the call and waiver is employed thereafter to assemble meetings of stockholders, on account of the difficulty—save in the smaller corporations—of securing the signature of every party entitled to be present at the meeting. Special meetings of the directors are commonly assembled by means of the call and waiver.

(a) Special Meetings of Stockholders.

Forms of calls and waivers to assemble the first meeting of stockholders have already been presented. (See Forms 32, 33.) The following form is for use after organization.

Form 39.—Call and Waiver. Special Meeting of Stockholders.

CHELTINGHAM LINEN COMPANY.

Call and Waiver.
SPECIAL MEETING OF STOCKHOLDERS.

We, the undersigned, being all the stockholders of the Cheltingham Linen Company of Trenton, New Jersey, hereby call a special meeting of the stockholders of said Company to be held in the Company's office, No. 275 Main Street, Trenton, New Jersey, on the 21st day of October 1908, at 3 o'clock in the afternoon, for the purpose of considering and acting upon a proposition for the consolidation of this Company with the Wilson Thread Company of Trenton, New Jersey, and we hereby waive all statutory and by-law requirements as to notice of time, place and objects of said meeting, and agree to the transaction thereat of any and all business pertaining to the affairs of the Company.

Trenton, N. J.,
October 17, 1908.

James H. McLain. Frank H. Small.
Theodore McGowan. William T Masters.
Joseph H. French. John H. Meade.
Charles P. Henderson. Henry T. Arnold.
David B. Adams. William Rollands.

Where the number of stockholders is large, the call

followed by notice is used in assembling special meetings. The call itself authorizes the meeting as set forth in its terms. (See § 96.)

When a call for a special meeting is issued by the president, it should be directed to the secretary.

Form 40.—President's Call. Special Meeting of Stockholders.

HUDSON NAVIGATION COMPANY.
270 Broadway, New York.

Mr. Henry H. Sheldon,
Secretary Hudson Navigation Co.:

You are hereby authorized and instructed to send out notice of a special meeting of the stockholders of this Company hereby called by me, said meeting to be held in the office of the Company, No. 270 Broadway, New York City, on the 15th day of September, 1908, at 10 o'clock A. M., for the purpose of considering and acting upon a proposition to sell the entire property and assets of the Company, and for the transaction of any and all business in connection therewith that may properly come before said meeting.

September 1, 1908.

Harry M. Moody,
President.

This call is handed or sent to the secretary who thereupon sends out notices of the meeting. (Forms 52-54.)

Form 41.—President's Call. Special Meeting of Stockholders. Formal.

HUDSON NAVIGATION COMPANY.
270 Broadway, New York.

Mr. Henry H. Sheldon,
Secretary of the Hudson Navigation Co.

Dear Sir:—In accordance with the authority vested in me by the By-laws of this Company, I hereby call a special meeting of the stockholders to be held in the office of the Company, No. 270 Broadway, New York, on the 15th day of September, 1908, at 10 o'clock in the forenoon, for the purpose of considering and acting upon a proposition to sell the entire property and assets of the Company, and for the transaction of any and all business in connection therewith that may properly come before said meeting, and I hereby authorize and instruct you to give due notice of said meeting to the stockholders of this Company in accordance with the requirements of its By-laws.

September 1, 1908.

Harry M. Moody,
President.

A directors' call for a special meeting of stockholders (See § 96) must, according to the requirements of the by-laws, either be addressed to the president, who in his turn instructs the secretary to issue notice of the meeting so called, or to the secretary as in the following form, save when occasionally the by-laws permit direct publication notice by the directors.

Form 42.—Directors' Call. Special Meeting of Stockholders.

.....

CALL FOR SPECIAL MEETING OF STOCKHOLDERS.

We, the undersigned, directors of the Hudson Navigation Company, do hereby call a special meeting of the stockholders of said Company to be held in its office, No. 270 Broadway, New York, on the 15th day of September, 1908, at 10 o'clock in the forenoon, for the purpose of taking action on a proposition to sell the entire property and assets of the Company, and for the transaction of any and all business necessary in connection therewith, and we do hereby authorize and instruct the Secretary of the Company to send out notice of said special meeting in accordance with the by-law requirements of this Company.

New York City, New York,
September 1, 1908.

JOHN H. GOODRICH.
HENRY B. MERRILL.
ARTHUR C. MCCALL.

To Mr. HENRY H. SHELDON,
Secretary of the HUDSON NAVIGATION CO.

.....

This call is handed or sent to the secretary, and is followed by his notice of the meeting. When the by-laws provide that the president shall call special meetings on written request or instruction signed by a prescribed number of directors, the foregoing call might be modified to meet the conditions as follows:

Form 43.—Directors' Instructions. Special Meeting.

.....

To Mr. HARRY M. MOODY,
President HUDSON NAVIGATION CO.:

We, the undersigned, directors of the Hudson Navigation Company, do hereby authorize and instruct you to call a special meeting of the stockholders of said Company, to be held in its office. No. 270 Broadway, New York, on the 15th day of September, 1908, at 10 o'clock in the forenoon, for the purpose of taking action on a proposition to sell the entire property and assets of the Company and for the transaction of any and all business necessary in connection therewith.

New York City, New York.
September 1, 1908.

JOHN H. GOODRICH.
HENRY B. MERRILL.
ARTHUR C. MCCALL.

.....

These instructions are handed to the president, who in accordance therewith issues a call for the meeting. (See Forms 40, 41.) If Form 41 is followed, the first phrase, "In accordance with the authority vested in me by the By-laws of this Company," should be modified to correspond, as "Pursuant to written instructions of directors of this Company."

Special meetings of stockholders may always be called by resolution of the board of directors.

Form 44.—Directors' Resolution. Special Meeting of Stockholders.

.....

RESOLUTION.

BE IT RESOLVED, That a special meeting of the stockholders of this Company be and hereby is called, said meeting to be held in the office of the Company at No. 270 Broadway, New York City, on the 15th day of September, 1908, at 10 o'clock in the forenoon, for the purpose of considering and acting upon a proposition to sell the entire property and assets of the Company, and for the transaction of any and all business necessary or desirable in connection therewith.

.....

As the secretary is presumably present at the meeting or otherwise has access to the minutes, the mere passage of such a resolution is sufficient notice to him of the call, and he should send out notice of the meeting.

It is but seldom that the stockholders issue a request or call for a meeting. Usually when they do, it must, in accordance with by-law requirements, pass through the president's hands. If not so prescribed, their call may be addressed to the secretary, in which case the president's only official knowledge of the meeting is derived from the notice sent him by the secretary. Occasionally the by-

laws authorize the stockholders to give direct notification of the meeting by publication.

Form 45.—Stockholders' Request for Special Meeting.

To the President of the
ADAMS MACHINE COMPANY:

We, the undersigned, owning or controlling not less than two-thirds of the entire voting stock of the Adams Machine Company, do hereby request you to call a special meeting of its stockholders to be held in the office of the Company at No. 35 Broad St., New York, at 3 o'clock in the afternoon on the 19th day of October, 1908, for the purpose of considering the action of the directors of this Company in purchasing, in opposition to the expressed wishes of a majority of its stockholders, the machine shop and equipment of the Harrison Metal Working Company, located at 908 Willoughby St., Brooklyn, and to take such action in regard thereto as may seem necessary or desirable to the stockholders present at such meeting, and we request you to have due and timely notice thereof sent to each stockholder of this Company.

New York City, N. Y.,
October 1st, 1908.

NAME.	SHARES OWNED.
DAVID H. BENTLEY.....	200
JAMES J. ALLISON.....	250
OLIVER P. CHANDLER.....	500
STANLEY S. WOOD.....	150
HENRY M. SHERRILL.....	300
SPENCER HARRISON.....	150

This stockholders' request is handed to the president, who may either endorse his call on the request as in the form which follows, or may issue a call as in Forms 40 and 41.

Form 46. President's Endorsement of Stockholders' Request.

To the Secretary of the
ADAMS MACHINE COMPANY:

You are hereby instructed to give due notice of a special meeting of the stockholders of this Company hereby called by me in pursuance of the within stockholders' request, said meeting to be held in the office of the Company at No. 35 Broad St., New York City, at 3 o'clock P. M. on the 19th day of October, 1908, in accordance with and for the purposes set forth in the said request.

New York City, N. Y.,
October 2, 1908.

JOHN H. HARRELL,
President.

When the stockholders' call is directed to the secretary, its form will be as follows:

Form 47.—Stockholders' Call for Special Meeting.

To the Secretary of the
HOWARD WOOLEN MILLS CO.:

We, the undersigned, stockholders of the Howard Woolen Mills Company owning or controlling not less than two-thirds of its entire voting stock, do hereby call a special meeting of the stockholders of the Company to be held in its office at No. 45 Main St., Dunkirk, New York, at 12 o'clock noon on the 15th day of October, 1908, for the purpose of considering a proposition to amend the present By-laws so as to restrict the President's power to contract for the Company, and of taking such action in regard thereto as may seem necessary or desirable to the stockholders present at such meeting, and we do hereby authorize and instruct you to send out notices of said meeting in accordance with the terms of this present call.

Dunkirk, New York,
October 5, 1908.

NAMES.	SHARES OWNED.
HENRY B. CLARKE.....	575
HARRY H. HOWARD.....	1200
FRANK B. JOHNSON.....	725
SAMUEL FURMAN.....	500

(b) SPECIAL MEETINGS OF DIRECTORS.

Special meetings of directors are usually assembled by means of calls and waivers, except where the board is large or some of its members are inaccessible. The common form of call and waiver for directors' meetings is as follows:

Form 48.—Call and Waiver. Special Meeting of Directors.

CALL AND WAIVER.

SPECIAL MEETING OF DIRECTORS.

We, the undersigned, all the Directors of the Long Island Power Company of Flushing, Long Island, do hereby call a special meeting of the Board of Directors of said Company to be held in its office at No. 285 Duane St., New York City, at 4 o'clock P. M. on this 21st day of October, 1908, for the purpose of acting upon a proposition for the sale of the Company's Flushing plant, and we do hereby waive all statutory and by-law requirements as to notice of time, place and purposes of said meeting, and consent to the transaction thereat of any and all business pertaining to the affairs of the Company.

New York City, N. Y.,
October 21, 1908.

JOHN MCFERGUSON.
HAROLD H. HARDING.
BENTON CRELLER.
HOWARD H. MAURICE.
HORACE EVANS.

Special meetings of directors are sometimes irregularly assembled, as for instance where all the members of a board come together on some informal notice or without previous notice, and then and there agree to waive all the usual formalities and hold an immediate meeting. Such meetings, termed "consent meetings," are entirely legal and are not uncommon where boards of directors or executive committees are small and easily assembled. (See § 131.)

For such meetings a written validation is not strictly necessary. The participation of all the parties entitled to be present, duly entered on the minutes of the meeting, affords legal evidence of their consent thereto and estops any subsequent objections on their part to the proceedings. As a precautionary measure, however, the secretary should have every member of the board sign the minutes of a consent meeting or, otherwise, sign a waiver of notice and agreement to the meeting as given below:

Form 49.—Agreement. Consent Meeting of Directors.

HARRISON CUTLERY COMPANY.

WAIVER OF NOTICE.

We, the undersigned, all the Directors of the Harrison Cutlery Company, being now present, do hereby consent to an immediate meeting of the Board of Directors of said Company to be held in the office of Henry H. McCall, No. 253 Broadway, New York, at 3 o'clock P. M. this 14th day of October, 1908, and we hereby waive all requirements as to notice of time, place and purposes of such meeting, and agree to the transaction thereat of any and all business pertaining to the affairs of the Company.

HENRY H. MCCALL.
SIMON FRANKENSTEIN.
JAMES J. MCCALL.
HOWARD H. FRENKEL.
STANLEY T. BROWN.

The call for a special meeting of directors must be signed as required by the by-laws—usually by the president or a certain number of the directors. A form of president's call is as follows:

Form 50.—President's Call. Special Meeting of Directors.

CORLISS TYPEWRITER COMPANY.
35 Vesey St., New York.

OCTOBER 1st, 1908.

Mr. JOHN H. HAMMOND,
Secretary CORLISS TYPEWRITER CO.

DEAR SIR:—In accordance with the authority vested in me by the By-laws of this Company, I hereby call a special meeting of the Board of Directors to be held in the office of the Company on the 15th day of October, 1908, at 3 o'clock in the afternoon, for the purpose of considering and acting upon the appointment of a Western selling agent, and for the transaction of any other business in connection therewith that may be necessary and you are hereby authorized and instructed to send out notices of said meeting as required by the By-laws of this Company.

JOHN H. PHILLIPS,
President.

This call is handed to the secretary who, in accordance with its instructions, follows it up with the usual notice of the meeting. (See Form 60.)

The by-laws frequently provide that special meetings of the board may be called by a certain number of the directors. This call is usually addressed as in the following form and handed to the secretary direct.

Form 51.—Directors' Call. Special Meeting of Directors.

CALL FOR SPECIAL MEETING OF DIRECTORS.

We, the undersigned, Directors of the Westchester Brewing Company, hereby call a special meeting of the Directors of said Company, to be held in its office, No. 1575 St. Nicholas Ave., New York, on the 7th day of October, 1908, at 11 o'clock A. M., for the purpose of considering and acting upon a proposition to purchase the plant and equipment of the Harrison Brewery, and for the transaction of any and all business necessary in connection therewith, and we hereby instruct the Secretary of the Company to send out notices of said special meeting in accordance with the By-law requirements of this Company.

New York City,
October 1, 1908.

HENRY C. CARSON.
FRANK H. MERRILL.
SAMUEL FRENKEL.

To Mr. JOHN H. HERSEY,
Secretary WESTCHESTER BREWING CO.

CHAPTER XXIX.

FORMS FOR NOTICES OF MEETINGS.

Every person entitled to be present at a corporate meeting is also entitled to notice of such meeting. If the notice to be given is prescribed by the charter, by-laws or statutes, this is always sufficient, but if not so determined, "reasonable notice" is then necessary and this requires such notice as will under ordinary circumstances enable the parties notified to attend the meeting without great inconvenience to themselves or injury to their other interests. (See §§ 80, 97, 129.)

Notice of a special meeting must accord as to the time, place and purposes thereof with the call by which the meeting is authorized. The authority under which it is issued should be stated in the notice—a requirement that is frequently neglected.

(a) Meetings of Stockholders.

Form 52.—Notice. Special Meeting of Stockholders.

HUDSON NAVIGATION COMPANY.

New York City, New York, September 1, 1908.

Mr. Arthur C. McCall,
227 Broadway, New York.

Dear Sir:—You are hereby notified that pursuant to the call of the President, a special meeting of the stockholders of the Hudson Navigation Company will be held in the office of the Company, No. 270 Broadway, New York, on the 15th day of September, 1908, at 10 o'clock A. M., for the purpose of considering and acting upon a proposition to sell the entire property and assets of the Company, and for the transaction of any and all business in connection therewith that may properly come before said meeting.

Yours very truly,
Henry H. Sheldon,
Secretary.

(For president's call, see Forms 40, 41.)

When notice of a special meeting is to be published, the following form is frequently used. The same form also serves as a notice to be sent by mail.

Form 53. Publication Notice. Special Meeting of Stockholders.

HUDSON NAVIGATION COMPANY.
270 Broadway, New York.

Notice is hereby given that a special meeting of the stockholders of the Hudson Navigation Company will be held in the office of the Company, No. 270 Broadway, New York City, on the 15th day of September, 1908 at 10 o'clock in the forenoon, for the purpose of considering and acting upon a proposition to sell the entire property and assets of the Company, and for the transaction of any and all business in connection therewith that may properly come before said meeting.

By order of the President.

New York City, N. Y., September 1, 1908. Henry H. Sheldon, Secretary.

The following gives an excellent form of notice for a special meeting of stockholders.

Form 54.—Publication Notice. Special Stockholders' Meeting. (U. P. R. R. Co.)

UNION PACIFIC RAILROAD COMPANY.

Special Meeting of Stockholders.

120 Broadway, New York, March 26, 1908.

To the Stockholders of the
Union Pacific Railroad Company:

Notice is hereby given that a special meeting of the stockholders of Union Pacific Railroad Company has been called by the Board of Directors to convene at the office of the Company at Salt Lake City, in the State of Utah, on the 5th day of May, 1908, at 10 o'clock A. M., for the purpose of considering and acting upon the following propositions, viz.:

1. To approve or ratify the sale to said Union Pacific Railroad Company of the railroad and branches, constructed or to be constructed,, of The Leavenworth, Kansas and Western Railway Company, together with all the property rights, privileges, and franchises thereto pertaining, and all other property of the Company last named;

2. To approve or ratify the sale to said Union Pacific Railroad Company of the railroad and branches, constructed or to be constructed, of The Topeka and Northwestern Railroad Company, together with all the property, rights, privileges, and franchises thereto pertaining, and all other property of the Company last named;

3. To authorize or approve an issue of bonds to be secured by a mort-

gage of a portion of said Union Pacific Railroad Company's lines of railroad, together with the appurtenances, including the lines of railroad proposed to be purchased as aforesaid.

The books for the transfer of the stock (both preferred and common) will be closed for the purpose of the meeting at 12 o'clock noon, on the 11th day of April, 1908, and will be reopened at 10 o'clock A. M., on the 6th day of May, 1908.

By order of the Board of Directors.

ALEX. MILLAR,
Secretary.

Notice of the annual meeting must be sent out in accordance with the requirements of the by-laws. (See § 80.)

Form 55.—Notice. Annual Meeting.

HARMON PUBLISHING COMPANY.
765 Main St., Dover, Delaware.

OCTOBER 1, 1908.

Mr. FRANCIS H. JAMIESON,
336 Ocean Ave., Atlantic City, N. J.:

DEAR SIR:—You are hereby notified that the annual meeting of the stockholders of the Harmon Publishing Company will be held at the office of the Company in Dover, Delaware, on Tuesday, October 13th, 1908, at 10 o'clock A. M., for the election of five Directors for the ensuing year and for the transaction of such other business as may come before the meeting.

The stock transfer books of the Company will be closed at 3 o'clock P. M., October 5th, 1908, and remain closed until 10 o'clock A. M., October 14th, 1908.

Respectfully,
JAMES H. HOWARD,
Secretary.

The following is the form of mailing notice employed by the United States Steel Corporation:

Form 56.—Notice. Annual Meeting. (U. S. Steel Corp.)

UNITED STATES STEEL CORPORATION.

NOTICE OF SEVENTH ANNUAL MEETING.

Notice hereby is given that the Seventh Annual Meeting of the stockholders of the United States Steel Corporation will be held at the principal office of the Corporation, at the Hudson Trust Company, No. 51 Newark Street, in the City of Hoboken, County of Hudson, New Jersey, on Monday, the twentieth day of April, 1908, at 12 o'clock noon, for the transaction of any and all business that may come before the meeting, including considering and voting upon the approval and ratification of all purchases, contracts, acts, proceedings, elections and appointments by the Board of Directors or the Finance Committee since the Sixth Annual Meeting of the stockholders of the Corporation on April 15, 1907; the authorization of the purchase of the properties belonging to the Tennessee Coal, Iron and Railroad Company; and all matters referred to in the Sixth Annual Report to Stockholders and in the proceedings of the Board of Directors, which until the meeting will be open to examination by stockholders of record during business hours at the New York Office of the Corporation, 71 Broadway; the election of eight Directors to hold office for three years; and the election of independent auditors to audit the books and accounts of the Corporation at the close of the fiscal year.

The stock transfer books will be closed at the close of business on Monday, the 16th day of March, 1908, and will be re-opened at 10 o'clock in the morning of Tuesday, April 21, 1908.

RICHARD TRIMBLE,
Secretary.

HOBOKEN, New Jersey,
February 9, 1908.

As the stock of the Corporation should be represented as fully as possible at the annual meeting, Stockholders who do not expect to attend in person, and who wish to vote as therein indicated, may sign the enclosed proxy and return the same in the accompanying envelope addressed to United States Steel Corporation, Transfer Office, 71 Broadway, New York.

In view of the very considerable amount of detail necessary to prepare for this meeting, it is desired that a proxy shall be returned at as early a date as possible by every Stockholder.

A copy of the Sixth Annual Report will be mailed to each Stockholder of record under a separate cover and will be submitted at the meeting.

RICHARD TRIMBLE,
Secretary.

(For proxy accompanying this notice, see Form 68.)

In a number of states the statutes require the publication of the notice of the annual meeting. The following forms are suitable for this purpose. Form 55 may also be easily modified to serve as a publication notice:

Form 57.—Publication Notice. Annual Meeting.

HARMON PUBLISHING COMPANY.
765 Main St., Dover, Delaware.

OCTOBER 1, 1908.

Notice is hereby given that the annual meeting of the stockholders of the Harmon Publishing Company will be held at the office of the Com-

pany at 765 Main St., Dover, Delaware, October 13, 1908, at 10 o'clock A. M., for the election of five Directors and for the transaction of such other business as may be brought before said meeting.

The stock transfer books of the Company will be closed at 3 o'clock P. M., October 5, 1908, and remain closed until 10 o'clock A. M., October 14, 1908.

JAMES H. HOWARD,
Secretary.

Form 58.—Publication Notice. Annual Meeting.

NEW YORK LOAN AND IMPROVEMENT CO.

NEW YORK, June 12, 1908.

The Annual Meeting of the Stockholders of the New York Loan and Improvement Company, for the election of nine Directors, and two inspectors of election and the transaction of such other business as may properly come before the meeting, will be held at the office of the company, No. 51 Wall Street, New York City, on Tuesday, July 14, at 12 o'clock noon. The polls will be open from 12 M. to 1 P. M.

F. S. ROLLINS,
Secretary.

In the notice which follows a portion of the purposes are omitted to save space.

Form 59.—Publication Notice. Annual Meeting. (U. P. R. R. Co.)

UNION PACIFIC RAILROAD COMPANY.

ANNUAL MEETING.

120 BROADWAY, New York,
August 13, 1908.

The Annual Meeting of the stockholders of Union Pacific Railroad Company will be held at the office of the Company in Salt Lake City, Utah, on Tuesday, October 13, 1908, at twelve o'clock noon, for the following purposes, viz.: (1) To elect fifteen Directors; (2) To approve the form, and to authorize and direct the execution and delivery to The Equitable Trust Company of New York, as Trustee of the Company's First Lien and Refunding Mortgage, dated June 1, 1908, of an indenture for * * * * * * and (4) To transact all such other business as may legally come before the meeting, including the approval and ratification of all action of the Board of Directors and of the Executive Committee since the last Annual Meeting of the stockholders of the Company.

For the purposes of the meeting the books for the transfer of stock, both preferred and common, will be closed at 3 o'clock P. M. on Monday, September 14, 1908, and will be reopened at 10 o'clock A. M. on Wednesday, October 14, 1908.

ALEX. MILLAR,
Secretary.

(b) MEETINGS OF DIRECTORS.

Form 60.—Notice. Special Meeting of Directors.

HYDRO-CARBON STEEL COMPANY.
134 West 23rd St., New York City.

SEPTEMBER 15, 1908.

Mr. WALTER H. SINCLAIR,
Montclair, New Jersey:

DEAR SIR:—You are hereby notified that pursuant to call of the President, a special meeting of the Board of Directors of this Company will be held in its office at 3 o'clock P. M. on the 18th day of September, 1908, to act upon a proposition to purchase the plant of the Scranton Foundry Company and to transact such other business in connection therewith as may be necessary or desirable.

Respectfully,
MILTON H. SANDERSON,
Secretary.

This notice must be sent to every member of the board. The time, place and purpose of the meeting must be stated, and, unless every member of the board is present and agrees thereto, no business may be transacted at the meeting save that so specified.

Form 61.—Notice. Regular Meeting of Directors.

HYDRO-CARBON STEEL COMPANY.
134 West 23rd St., New York City.

OCTOBER 1, 1908.

Mr. WALTER H. SINCLAIR,
Montclair, New Jersey:

DEAR SIR:—You are hereby notified that the regular quarterly meeting of the Board of Directors of the Hydro-Carbon Steel Company will be held in the office of the Company, No. 134 West 23rd St., New York, on Tuesday, October 13, 1908, at 3 o'clock P. M.

Respectfully,
MILTON H. SANDERSON,
Secretary.

It is but rarely that publication notices are used in assembling directors' meetings. Either of the foregoing notices might be readily modified, if desired, to serve as a publication notice. Consent meetings, from their nature, neither permit nor require any formal notice. (See § 131.)

CHAPTER XXX.

FORMS OF PROXIES.

A proxy is merely a special power of attorney (See § 85) and may convey any authority the maker desires up to the limit of his own.

The powers conferred by a proxy are limited strictly to those specified. Thus a proxy to vote on a proposed amendment of the charter at a certain meeting would not authorize the holder to also vote upon a proposed amendment of the by-laws though considered at the same meeting.

The time for which a proxy runs is also governed strictly by the provisions of the instrument unless sooner terminated by statutory or by-law provisions (See § 85), or by the death of the maker, or by the sale of his stock, or by his formal revocation filed with the secretary, or, for the meetings at which he appears, by the presence and participation thereat of the maker.[1] A proxy given for a particular meeting holds good for any meeting adjourned therefrom, whether so specified or not.

"A proxy should be in writing, but it need not be in any particular form; it need not be acknowledged or approved, but it must be in such a shape as reasonably to satisfy the inspectors of election of its genuineness and validity."[2] To meet this requirement the proxy should be

[1] Chapman v. Bates, 61 N. J. Eq. 658 (1900); Commonwealth v. Patterson, 158 Pa. St. 476 (1893).
[2] 2 Cook on Corp., § 610.

signed and sealed by the maker and be witnessed by at least one person, but does not ordinarily require acknowledgment. It may cover all or any part of the stock owned by an individual, and two or more proxies may be given by a single stockholder, each proxy covering a part of his holding. (See Form 66.)

A proxy may be revoked by the maker at any time even though by its terms the proxy is irrevocable. The only exception to this rule is where occasionally a proxy is coupled with an interest in the stock on which the proxy is given. The revocation of a proxy should be in writing and be filed with the secretary of the meeting. The mere presence of the owner of the stock at any meeting, with the express intention of voting his stock thereat, has the effect of revoking for that meeting all outstanding proxies given by him. If a proxy is issued while a prior proxy for the same stock is outstanding, a revocation of the first proxy should be incorporated in the second. Should this not be done, the more recent proxy will on presentation revoke the first, but the absence of formal revocation is a suspicious circumstance, liable to provoke inquiry and cause trouble.

Notices of the annual meetings of the larger corporations are usually accompanied by proxy forms, which stockholders unable to be present at the meeting in person are requested to sign and send in to the corporate officials. (See Form 56.) In this way a quorum is often secured when otherwise it would fail. The plan is sometimes utilized with much effect for the purpose of securing a majority for some measure favored by the directors of the company.

Proxies sent with notices of meetings sometimes name the parties to act (See Form 68) but are frequently sent out without, and are then usually returned signed in blank; i. e., while duly signed and witnessed, the name of the

person who is to act as proxy is omitted. The name of the secretary or someone else present at the meeting is then inserted and the instrument so completed is legally effective.

Proxies signed in blank are usually employed in any case where the name of the party to act has not been definitely decided upon or where it is immaterial. In this shape the proxy can be used by anyone into whose hands it may come. When once completed, however, by the insertion of the name of the party to act, it can be used only by the specified party, nor can this party authorize anyone else to vote the stock covered by the proxy unless the proxy itself distinctly confers upon him full rights of substitution.

Directors cannot give proxies authorizing others to represent and vote for them at directors' meetings. The directors occupy a position of trust and they cannot as individuals delegate the trust vested in them to others.

When proxies are to be used they are filed with the secretary of the meeting. If the holder desires to retain his original proxy, he may, after exhibiting the original, file a certified copy with the secretary of the meeting.

Form 62.—Proxy. Simple Form.

PROXY.

I hereby appoint George H. Brewer my proxy with full authority to vote for me and in my place at any and all stockholders' meetings of the Brewer Plow Company.

Witness my hand and seal this 7th day of October, 1908.

HAROLD J. MCCORMICK. (L. S.)

Witnessed by
HENRY F. SIMMONS.

This proxy is under most circumstances legally sufficient and the powers it conveys are broad. A more formal proxy is, however, desirable when important matters are to be considered. The proxy which follows is still simple as to form but more specific in its terms.

Form 63.—Proxy. Unlimited.

PROXY.

I, the undersigned, do hereby constitute and appoint George J. McClelland my true and lawful attorney to represent me at any and all meetings of the stockholders of the Carney Falls Power Company, and for me and in my name and stead to vote thereat upon the stock standing in my name on the books of said Company at the times of said meetings, and I hereby grant my said attorney all the powers that I should myself possess if personally present thereat.

Witness my signature and seal this 1st day of August, 1908.

HAROLD B. MCCLELLAND. (L. S.)

In the presence of
ALPHONSE H. DURET.

At the expiration of the specified term the following proxy becomes null and void without formal revocation or other action on the part of the maker.

Form 64.—Proxy. Time Limited.

PROXY.

I, the undersigned, do hereby constitute and appoint Henry M. Williams my true and lawful attorney to represent me at all meetings of the stockholders of the Carney Falls Power Company held on or prior to the 15th day of June, 1909, and do hereby authorize and empower him for me and in my name and stead to vote at such meetings upon the stock now standing in my name on the books of said Company, and I hereby grant my said attorney all the power at said meetings that I should myself possess if personally present thereat.

Witness my signature and seal this 15th day of August, 1908.

SAMUEL B. FREMONT. (L. S.)

In the presence of
J. J. MASTERSON.

It should be noted that the wording of the foregoing proxy authorizes the appointee to vote only upon the stock "now standing in my name." Should the maker acquire additional stock of the company after the date of this proxy, but during its life, such additional stock is not covered by the proxy. In this the proxy differs from the proxy of Form 63 which covers all stock owned by the maker "at the times of said meetings."

Form 65.—Proxy. Particular Meeting.

PROXY.

KNOW ALL MEN BY THESE PRESENTS:

That I, the undersigned, do hereby constitute and appoint Kenneth J. Johnson my true and lawful attorney with full powers of substitution and revocation, to represent me at the special meeting of stockholders of the Graham Navigation Company, to be held on the 19th day of October, 1908, at 3 o'clock P. M., and do hereby authorize and empower him to vote at said meeting and at any adjournment thereof, for me and in my name and stead, upon the stock then standing in my name on the books of said Company, and I hereby grant my said attorney all the powers that I should possess if personally present at said meeting.

Witness my signature and seal this 1st day of October, 1908.

MELVER M. MCKIM. (L. S.)

In the presence of
HENRY P. SWENTON.

Outside its limitation as to time, the preceding proxy is broad. It not only covers all stock held in the name of the maker at the time of meeting and empowers the appointee to act as fully and with the same authority as the owner might himself, but also empowers him to give and revoke proxies conveying similar voting powers to others. If it is not desired to convey these latter powers, the words "with full power of substitution and revocation" should be omitted.

If all the stock covered by a proxy is disposed of before the date of meeting, such proxy is thereby nullified. If part of the stock is sold, the proxy still holds for the remaining stock. If a proxy specifies the number of shares of stock to be voted upon, such proxy is good for the number of shares standing in the maker's name up to the specified number.

Form 66.—Proxy. Limited as to Stock.

PROXY.

I, the undersigned, do hereby nominate and appoint John H. McCracken my true and lawful attorney, for me and in my name, place and stead to vote at all stockholders' meetings of the Fowler Watch Company upon Twenty-five Shares of the stock of said Company standing in my name, and I hereby grant my said attorney all the powers as to said

Twenty-five Shares of stock that I would myself possess if personally present at such meetings.

Witness my signature and seal this 10th day of October, 1908.

FRANCIS P. STERLING.

In the presence of
HARRY H. FRENCH.

The preceding form may be used when but a portion of the stock owned by a stockholder is to be represented by his proxy. A single stockholder may give several such proxies to cover his entire holding of stock, the object being to admit several representatives to the proceedings of the meeting.

Form 67.—Proxy. Annual Meeting. Formal.

PROXY.

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, stockholders of the Carney Falls Power Company, do hereby constitute and appoint J. Adam McCall our true and lawful attorney with full power of substitution and revocation, for us and in our names, place and stead to vote upon the stock then standing in our respective names upon the books of said Company, at the annual meeting of the stockholders thereof to be held in the office of the Company, 425 Fifth Ave., New York City, January 15, 1909, at 10 o'clock in the forenoon, and at any meeting postponed or adjourned therefrom, hereby granting to our said attorney full power and authority to act for us and in our names and stead to vote thereat upon our said stock in the election of directors and in the transaction of such other business as may be brought before the said meeting, all as fully as we might or could do if personally present, and we hereby ratify and confirm all that our said attorney or his substitute shall lawfully do at such meeting in our names, place and stead.

IN WITNESS WHEREOF, we have hereunto affixed our respective signatures and seals this 2nd day of November, 1908.

S. S. FOLSOM. (L. S.)
HENRY M. CLEVELAND. (L. S.)
J. B. MCLAIN. (L. S.)
SARGENT MCLAIN. (L. S.)

In the presence of
WILLIAM. J. HAMMOND
as to S. S. Folsom
and Henry M. Cleveland.
JERRY T. MCALLISTER
as to J. B. McLain
and Sargent McLain.

The preceding proxy does not convey any greater or more complete powers than the shorter forms heretofore

considered but is more specific and conventional and therefore preferable when matters of importance are to be considered and acted upon.

The following proxy for an annual meeting is also formal and is in addition specific; i. e., it directs that the vote of the proxy shall be cast in favor of certain specified measures. The proxy is also peculiar in the fact that five attorneys are appointed thereby, all to act through a majority of those present at the meeting.

Form 68.—Proxy. Annual Meeting. (U. S. Steel Corp.)

.....

UNITED STATES STEEL CORPORATION.
PROXY FOR SEVENTH ANNUAL MEETING OF APRIL 20, 1908.

KNOW ALL MEN BY THESE PRESENTS, That the undersigned Stockholder in United States Steel Corporation, do hereby constitute and appoint J. P. Morgan, H. C. Frick, E. H. Gary, N. B. Ream and N. Thayer, and each, or any of them, true and lawful attorney or attorneys, agent or agents and proxy or proxies of the undersigned, with power of substitution, for and in the name, place and stead of the undersigned, to vote upon all Common Stock and all Preferred Stock, or either, held or owned by the undersigned, at the Seventh Annual Meeting of the Stockholders of the United States Steel Corporation, to be held at the office of said Corporation at Hoboken, New Jersey, on Monday, the twentieth day of April, 1908, and at any and all adjournments thereof, for the transaction of any and all business that may come before the meeting, including considering and voting upon the approval and ratification of all purchases, contracts, acts, proceedings, elections and appointments by the Board of Directors or by the Finance Committee since the sixth annual meeting of the Corporation, the authorization of the purchase of the properties belonging to the Tennessee Coal, Iron and Railroad Company, and all matters referred to in the notice of this meeting and in the Sixth Annual Report to Stockholders and in the minutes of the meetings of the Board of Directors and of the Finance Committee, the election of eight Directors to hold office for three years, the election of independent auditors, and upon any and all matters that may come before the meeting, according to the number of votes the undersigned would be entitled to vote if then personally present; hereby revoking any proxy or proxies heretofore given to vote upon such stock, and ratifying and confirming all that said attorneys, agents, and proxies may do by virtue hereof. A majority of all or of any of said attorneys, agents and proxies who shall be present and shall act at the meeting (or if only one shall be present and act, then that one) shall have, and may exercise, all of the powers of all of said attorneys, agents and proxies hereunder; and they are instructed to vote in favor of the authorization of the purchase above mentioned and the approval and ratification of each and every of said purchases, contracts, acts, proceedings, elections and appointments.

Witness hand and seal this day of , 1908.

WITNESS: (SEAL.)

.....

Address.....

A simpler form of specific proxy limiting the acts of the proxy to a single object, is as follows:

Form 69.—Proxy. Specific Action.

.....

PROXY.

KNOW ALL MEN BY THESE PRESENTS:

That I, the undersigned, do hereby constitute and appoint Wilson H. McCall my true and lawful attorney to attend a special meeting of the stockholders of the American Desk Company to be held at the office of said Company, No. 35 Fulton St., New York, at 10 o'clock A. M. on the 13th day of October, 1908, and for me and in my name, place and stead to cast thereat the number of votes to which I may be entitled by virtue of the stock then standing in my name on the books of the said Company, against any and all propositions that may be presented to said meeting for the consolidation of the said American Desk Company with the Desk Company of New Jersey, and I do hereby grant my said attorney full power and authority to cast my said votes as herein set forth, and do hereby ratify and confirm my said attorney's action in so doing, expressly denying, however, to my said attorney, all right, power and authority to vote in my behalf on any other matter or matters coming up at said meeting.

IN WITNESS WHEREOF, I have hereunto affixed my signature and seal this 3rd day of October, 1908.

FRANKLIN S. SIBLEY. (L. S.)

Signed, sealed and delivered
in the presence of
HAMILTON W. MAXWELL.

.....

It frequently happens that stock of one corporation is the property of another corporation. Such stock may be held in the name of the owner corporation, or in the name of its treasurer or other trustee for the corporation. If the stock stands in the name of the treasurer or other trustee, the party in whose name it is held is as a matter of course entitled to vote the stock, or give a proxy. Usually such proxy is given in accordance with the instructions of the corporation for whose benefit the stock is held. A form of trustee's proxy is as follows:

Form 70.—Proxy. Trustee's.

.....

PROXY.

KNOW ALL MEN BY THESE PRESENTS:

That I, William H. Parker, holding in my name as Trustee for the Steel Company of the Republic, Five Hundred Shares of the Capital

Stock of the Howard Welding Company of New York City, do as said Trustee fully authorized thereto, hereby constitute and appoint Frederick W. Morton of New York City my true and lawful attorney to represent said stock at the annual meeting of the stockholders of the said Howard Welding Company, to be held in the office of said Company, No. 22 Broad St., New York City, on the 10th day of October, 1908, at 10 o'clock in the forenoon, and for me and in my stead to vote thereat upon the said Five Hundred Shares of stock belonging to the said Steel Company of the Republic, and I hereby grant the said Frederick W. Morton full power and authority to represent the said stock at the said meeting and to vote thereon in the election of directors and in the transaction of any other business that may be brought before the said meeting, or before any meeting adjourned therefrom, all as fully as I, as said Trustee, might do if I were personally present thereat, and I hereby ratify and confirm all that the said Frederick W. Morton shall lawfully do at said meeting by virtue of this present authority.

IN WITNESS WHEREOF, I have hereunto affixed my signature and seal as Trustee for the said Steel Company of the Republic in the City of Philadelphia on this 3rd day of October, 1908.

WILLIAM H. PARKER, (L. S.)
Trustee for the
Steel Company of the Republic.

In the presence of
FRED W. MORGAN.

If the corporate stock is held in the name of the treasurer or secretary, the general form of proxy is similar to that given. It is, however, signed with the maker's official title, as "Freeman H. Duncan, Treasurer," and in the body of the proxy a statement should appear that the stock held by him is in trust for his company.

If the corporate stock is held in the name of the owner corporation, the proxy might be given under the corporate name as in the following general form.

Form 71.—Corporate Proxy.

PROXY.

KNOW ALL MEN BY THESE PRESENTS:

That the Steel Company of the Republic, a corporation organized under the laws of the State of Pennsylvania, owning and holding Five Hundred Shares of the Capital Stock of the Howard Welding Company of New York City, does hereby constitute and appoint Frederick W. Morton of New York City its true and lawful attorney to attend the annual meeting of the aforesaid Howard Welding Company to be held in its office, No. 22 Broad St., New York, on October 10th, 1908, at 10 o'clock in the forenoon, and thereat for this Company and in its name, place and stead to vote upon the said Five Hundred Shares of stock, and to do all such

other things competent to a stockholder of said Howard Welding Company, as may in his judgment be necessary or advantageous for the interests of this Company, and to that end the said Steel Company of the Republic does hereby grant to its said attorney for said meeting, and for any meetings adjourned therefrom, any and all powers belonging to or pertaining to this Company as a stockholder of the aforesaid Howard Welding Company, hereby ratifying and confirming all that its said attorney may lawfully do at said meeting in its name, place and stead.

IN WITNESS WHEREOF, the President and Secretary of the said Steel Company of the Republic, duly authorized thereto, have hereunto affixed the signature and seal of their said Company, all being done in the City of Philadelphia, Pennsylvania, on this the 3rd day of October, 1908.

STEEL COMPANY OF THE REPUBLIC,
{ CORPORATE SEAL. } By JOHN H. SHERMAN,
President.

ATTEST SEAL:
WILLIAM H. McDONALD,
Secretary.

A directors' resolution as in the following form, when duly certified by the secretary of the company, is an excellent form of corporate proxy.

Form 72.—Corporate Proxy. Directors' Resolution.

WHEREAS, This corporation is the owner of record of Five Hundred Shares of the Capital Stock of the Howard Welding Company of New York City, and is entitled to representation thereon at the annual meeting of said Company to be held in its office, No. 22 Broad St., New York on the 10th day of October, 1908, at 10 o'clock in the forenoon:

NOW, THEREFORE, BE IT RESOLVED, That Frederick W. Morton of New York City be and hereby is constituted and appointed the true and lawful attorney of this Company to attend the said annual meeting of the Howard Welding Company, with full power and authority to vote thereat in the name, place and stead of this Company upon the said Five Hundred Shares of stock, and to do all such other things thereat competent to a stockholder of said Howard Welding Company, as may in his judgment be necessary or advantageous for the interests of this Company, and that he be hereby granted for said meeting and for any meetings adjourned therefrom, any and all powers belonging to or pertaining to this Company as a stockholder of the aforesaid Howard Welding Company, and that all its said proxy shall lawfully do at said meeting in the name, place and stead of this Company be hereby fully ratified and confirmed.

In some state the statutes empower the corporate officials to vote the stock of other corporations held by their corporation. In such case no proxy is necessary, but a certification that the official representing the company is its official, properly representing the company, is required.

Form 73.—Revocation of Proxy.

.....

REVOCATION OF PROXY.

KNOW ALL MEN BY THESE PRESENTS:

That I, the undersigned, do hereby revoke and annul any and all proxies or powers of attorney heretofore given by me, authorizing or empowering any person or persons to represent me, or vote in my name and stead or act for me in any way whatsoever at any meeting or meetings of the stockholders of the Carney Falls Power Company.

Witness my signature and seal this 10th day of October, 1908.

DANIEL H. RONALDS. (L. S.)

In the presence of
JOHN H. DUNN.

.....

The foregoing revocation of outstanding proxies is sweeping in its terms. If some particular proxy is to be excepted from the general revocation, such proxy may be specifically reserved, or otherwise the revocation may itself be limited by its terms to the one or more proxies to be revoked, and any other proxies then outstanding are not affected.

CHAPTER XXXI.

FORMS OF MOTIONS AND RESOLUTIONS.

In the proceedings of corporate meetings, whether of stockholders or directors, anything obviously proper and of no great importance may be merely directed by the president, and, in the absence of objection, this is held to be the action of the meeting. Matters of more importance are sometimes acted upon in this same way, but, usually, and preferably, action is taken by means of either a motion or a resolution.

There is no distinct line of demarcation between these two. They differ as to form but both are expressions of the decisions of the meeting and are of the same legal force. The motion is the simpler in form, and, though there is no well established rule, is usually employed for matters of minor importance, while resolutions, which are formal and usually go further into their subject matter, are employed for such important corporate actions as require a more complete statement and record. (See Ch. XIX.)

(a) MOTIONS.

Motions are not as a rule submitted in writing. The secretary must therefore exercise every care to get the sense of what is intended. If he is in doubt in any case as to whether he has understood the motion, or if its subject matter is of unusual importance, or if it is desirable that the exact wording be preserved, the presiding officer

should request the maker of the motion to repeat it, or, better, to reduce it to writing. When this is done, the motion is turned over to the secretary, and, if carried, is incorporated in his minutes in the exact form submitted.

The following forms show motions as they appear in the secretary's minutes. The form is the same for either stockholders' or directors' minutes.

Form 74.—Motion. To Receive President's Report.

"On motion duly seconded and unanimously carried, the President's report as read was ordered received and filed."

Form 75.—Motion. Instructing Secretary to Cast Vote.

"There being no other nominations, the Secretary was instructed by motion unanimously carried, to cast the single ballot of the meeting for the five candidates for Directors already named."

Form 76.—Motion. Instructing Secretary to Cast Vote. Formal.

"On motion unanimously carried, the Secretary was instructed to cast the single ballot of the meeting as follows:

For President.....John H. McNeil.
" Vice-President .....Samuel French.
" Secretary .....Harry McGill.
" Treasurer .....Joseph F. Macklin."

An amendment to the by-laws is usually acted upon by means of a resolution. (See Form 83.) In the following instance, as the amendment is of minor importance, it is decided by motion.

Form 77.—Motion. To Amend By-Laws.

"By motion unanimously carried, Section 1 of Article II of the By-Laws was amended by changing the hour for the assembling of the annual meeting of the Company from 12 o'clock noon to 3 o'clock P. M."

Form 78.—Motion. To Pay Bills.

"Upon motion duly seconded and unanimously carried, the Treasurer was instructed to pay the account of the Meyer Contracting Company for One Hundred and Thirty-Five Dollars, due for repairs on roof of the Franklin Mill as per statement submitted."

Usually the secretary uses his discretion as to recording the names of the parties making and seconding motions. They are not essential in the case of routine motions, motions covering matters of minor importance or motions unanimously carried. Under other circumstances the name of the party making and also the party seconding a motion should be recorded. The vote on important motions when there is opposition, is sometimes recorded as well.

Form 79.—Motion. To Employ General Manager.

"Mr. Henry Sheldon moved that James J. McLain be employed as General Manager of the Company for a term of two years from date, at the annual salary of Fifteen Hundred Dollars payable in monthly instalments. The motion was seconded by Mr. Charles H. Corbett and carried; Messrs. Sheldon, McLemore, Corbett and Johnson voting in the affirmative, and Messrs. Franklin, Hereford and Trask voting in the negative."

A motion in writing should appear on the minutes in the exact form submitted, as in the following example, and should be introduced by an explanatory statement, as "The following motion offered by Mr. Wilson was duly seconded and carried by unanimous vote."

Form 80.—Motion. To Appoint an Investigating Committee.

"Moved, that the President be authorized and directed to appoint a committee consisting of three directors of this Company, to investigate the books and accounts of the Treasurer for the past three years, such committee to have full access to the Company's financial records and to have authority to employ an Auditor to conduct the technical work of their examination, the compensation of said Auditor not to exceed the sum of Three Hundred Dollars."

(b) RESOLUTIONS.

Resolutions should be submitted in writing. They are entered in the minutes prefaced with such explanatory remarks as the conditions require or the secretary thinks desirable, as "Upon motion duly made and seconded the following resolution was unanimously adopted," or "The following resolution was presented by Mr. Cassellton, seconded by Mr. Edwards and adopted, Messrs. Cassellton, Edwards, Brice and McNeil voting in the affirmative, and Messrs. Mack and Adams voting in the negative." A preamble is always admissible but if the subject matter of a resolution is simple, is not necessary.

There is no difference in form between a resolution adopted by the stockholders and one adopted by the directors.

(1) *Stockholders' Resolutions.*

Form 81.—Resolution. For Sale of Entire Assets.

.....

WHEREAS, William F. Gaynor and James G. Reilly as Trustees before organization for the New Hampshire Granite Company, have made a proposition to purchase the entire plant and business of this Company as a going concern, including all assets and liabilities, save cash in bank and on hand, for Ten Thousand ($10,000) Dollars in cash and Forty Thousand ($40,000) Dollars par value of the stock of said New Hampshire Granite Company:

NOW, THEREFORE, BE IT RESOLVED, That the said proposition be hereby approved, and that the Directors of this Company be and hereby are fully authorized, instructed and empowered to accept the said proposition for the sale of its entire property and business, and to do all things necessary to carry such acceptance into effect according to the terms of said proposition.

.....

(For corresponding directors' resolution, see Form 98.)

Form 82.—Resolution. Authorizing Consolidation.

.....

WHEREAS, A consolidation of the Midvale Foundry Company and the Midvale Steel Company under the name of the New Jersey Foundry Company, has been proposed, on terms and conditions set forth in an agreement entered into on the 17th day of November, 1908, between the Directors of said corporations and heretofore submitted to the stockholders of this Company; and

WHEREAS, Said proposed consolidation meets with the approval of the stockholders of this corporation:

NOW, THEREFORE, BE IT RESOLVED, That the Board of Directors of this Company be and hereby is fully authorized, empowered and instructed to take all such steps as may be necessary or desirable to carry said consolidation into effect in accordance with the terms of said agreement between the Directors of the two aforementioned corporations.

.....

(See Minutes, Form 111.)

Form 83.—Resolution. To Amend By-Laws.

.....

WHEREAS, Section 4 of Article IV of the By-laws of this Company reads and provides in part as follows:

"The Treasurer shall have the custody of all moneys and securities of the Company and shall keep regular books of account and balance the same each month."

AND WHEREAS, It seems to the stockholders of the Company that the interests of the Company will be better conserved if its moneys and securities are placed in the custody of its President:

NOW, THEREFORE, BE IT RESOLVED, That said Section 4 of Article IV of said By-laws be and hereby is amended as to the part above set forth to read and provide as follows:

"The Treasurer shall keep regular books of account and balance the same each month."

and that Section 2 of Article IV of said By-laws be amended to read and provide as follows:

"The President shall preside at all meetings of stockholders and directors; shall have general supervision of the affairs of the Company; shall have the custody of all its moneys and securities; shall sign or countersign, etc."

.....

(2) *Directors' Resolutions.*

The following is a simple form of resolution authorizing the treasurer to open a bank account. It should be certified before submission to the bank. (See Form 168.)

Form 84.—Resolution. To Open Bank Account.

.....

RESOLVED, That the Treasurer be and hereby is authorized and instructed to open an account for the Company with the Seaboard National Bank of New York City and to deposit therein all funds of the Company coming into his possession, such account to be in the name of the Company and funds deposited therein to be withdrawn only by check signed by the Treasurer and countersigned by the President.

.....

In some cases the designated bank requires a certified transcript of any by-laws relating to the duties and powers of the officers in relation to the funds. Such by-laws may

be certified separately (See Form 172), or may be included in the resolution, as in the following example.

Form 84a.—Resolution. Designating Depositary.

WHEREAS, Section 3, Article VII of the By-laws of the Standard Milling Company is as follows:

> "*The Moneys of the Company* shall be deposited in the name of the Company in such bank or banks as the Board of Directors shall designate, and shall be drawn out only by checks signed by the Treasurer and countersigned by the President, unless otherwise provided by resolution of the Board."

NOW, THEREFORE, In pursuance of said By-law, the Board of Directors of the Standard Milling Company hereby designates the Sherman Trust Company of New York City as a depository of this Company, and authorizes and instructs the Treasurer to open an account with said Trust Company in the name of the Company, and to deposit therein all funds of the Company coming into his custody, save as may be otherwise directed by the Board, said funds to be withdrawn only by check signed by the Treasurer and countersigned by the President.

(For certification of above resolution, see Form 168a.)

In many cases the banks have their own forms of resolution for designation of the corporate depositary, which they supply on request and which they naturally prefer should be used. As a rule these forms are good, though occasionally the latitude and power they confer upon the officers of the corporation are somewhat excessive. If this is the case, the resolution may be modified to meet the requirements of the particular corporation while still preserving its general form. The form of resolution which follows is used by some of the large New York banks.

Form 85.—Resolution. Designating Bank.

RESOLVED, That the Sherman National Bank of the City of New York be and the same is hereby designated as the depository of the funds of the American Textile Company, and that an account be opened with such Bank in the name of said Company, and that George H. Wahrman, the Treasurer of said Company, so long as he shall be Treasurer thereof is hereby authorized to sign or endorse any instrument for or on behalf of said Company and have the same placed to the credit of said account, and also from time to time to withdraw or transfer by check or draft or other instrument signed by him and countersigned by Henry G. Maxim, President of the said American Textile Company, or any successor President of said Company, any amount or parts thereof which may from time to time be to the credit of said account; and

RESOLVED FURTHER, That the respective powers and the authority conveyed by this present resolution shall pass to any duly elected and qualified successor Treasurer or President of the said American Textile Company without further action of this Board, and as fully and to the same extent as if said successor officers were named herein.

(For certification of this resolution, see Form 169.)

Under this resolution if a new treasurer or president is elected, nothing is necessary save for the election and acceptance of the new official to be certified to the bank by the secretary of the company. (See Forms 170, 171.)

Form 86.—Resolution. Authorizing Issue of Stock.

RESOLVED, That the President and Treasurer be and hereby are authorized and directed to issue certificates of the full-paid Capital Stock of this Company to the aggregate amount of Ten Thousand ($10,000) Dollars, and to deliver the same to the written order of Robert H. Stuart, Fiscal Agent for the Company, against payment into the treasury of the Company of the full par value thereof.

Form 87.—Resolution. Authorizing Contract.

RESOLVED, That the President and Secretary be and hereby are authorized and instructed to enter into a contract with the Wilbur Collins Construction Company on behalf of this corporation, for the erection of a power house, the construction of said power house to be in accordance with the plans and specifications on file in the office of this corporation and the cost thereof not to exceed Twenty Five Thousand ($25,000) Dollars, payment thereof to be made as set forth in the written proposition heretofore submitted to this corporation by the said Wilbur Collins Construction Company.

Form 88.—Resolution. Declaring Dividend.

RESOLVED, That the sum of Ten Thousand ($10,000) Dollars be and hereby is appropriated and set aside from the surplus profits of this Company for the payment of the regular Two (2%) Per Cent. quarterly dividend upon its outstanding stock, said dividend to be due and payable on the 20th day of October, 1908, to stockholders of record as shown by the books of the Company at the close of business on the 15th day of October, 1908.

RESOLVED FURTHER, That the Treasurer of this Company be hereby authorized and instructed to give due notice of such dividend and to pay the same when due.

Form 89.—Resolution. Declaring Dividend. Preferred Stock.

.....

RESOLVED, That the semi-annual dividend of Three (3%) Per Cent. upon the outstanding Preferred Stock of the Company be and hereby is declared from surplus profits, said dividend to be paid on the 10th day of October, 1908, and to be payable to stockholders who appear of record on the 1st day of October, 1908, at 3 o'clock P. M., and that the Treasurer of this Company be hereby instructed and fully authorized to give due notice of such dividend and to pay the same on the date set forth.

.....

Form 90.—Resolution. Declaring Dividend. Preferred and Common Stock.

.....

WHEREAS, The surplus profits of this Company now exceed the sum of Ten Thousand ($10,000) Dollars required by the By-laws of this Company to be held as a reserve, and such excess is now available for payment of dividends:

NOW, THEREFORE, BE IT RESOLVED, That a dividend of Five (5%) Per Cent. be and hereby is declared upon the outstanding Preferred Stock of this Company, and a dividend of Three (3%) Per Cent. on the outstanding Common Stock of this Company, said dividends to be payable from said excess surplus profits of the Company on the 5th day of November, 1908, to stockholders appearing of record at 3 o'clock P. M., on this 15th day of October, 1908; and that the Treasurer of this Company be hereby fully authorized and instructed to give proper notice of said dividends, to pay the same when due, and to take all other necessary steps to carry out the intent of the present resolution.

.....

Form 91.—Resolution. Appointing Managing Director.

.....

RESOLVED, That Mr. William S. Weston be hereby appointed Managing Director of this Company and be given the general supervision and management of the Company's affairs and business, with such other powers and duties as the Board of Directors may from time to time confer upon him; the annual salary of said Managing Director to be Twenty-Four Hundred ($2400) Dollars, payable in monthly instalments of Two Hundred ($200) Dollars each.

.....

Form 92.—Resolution. Calling Special Meeting of Stockholders.

.....

WHEREAS, The authorized Capital Stock of this corporation is One Hundred Thousand ($100,000) Dollars divided into One Thousand (1,000) Shares of Common Stock of the par value of One Hundred ($100) Dollars each, of which Five Hundred (500) Shares are issued and Five Hundred (500) Shares are unissued; and

WHEREAS, It is deemed advisable by this Board that said Capital Stock shall be so classified and divided into Common and Preferred Stock that the said Five Hundred (500) Shares of outstanding stock shall be and remain Common Stock, but that the said Five Hundred (500) Shares of unissued stock shall become and be non-voting Preferred Stock, entitled to receive a cumulative, preferred dividend of Six (6%) Per Cent. per annum and redeemable at its par value at the option of the Company at any time after ten years from the date of its issue, and upon the liquidation of the Company to be redeemed if outstanding, at its full face value from the assets before any payment is made upon the Common Stock but not to participate further in said assets:

NOW, THEREFORE, BE IT RESOLVED, That a special meeting of the stockholders of this Company be and hereby is called to meet in the office of the Company on the 10th day of October, 1908, at 10 o'clock in the forenoon, for the purpose of considering and acting upon the proposed classification of the stock of this Company as afore set forth, and that the Secretary of the Company be hereby authorized and instructed to send out notices of said meeting as required by law and by the By-laws of this Company.

.....

This resolution conforms to the requirements of the New York laws, classification of the company's stock requiring authorization by the stockholders.

Form 93.—Resolution. To Sell Bonds.

.....

RESOLVED, That Howell & Wilkins of New York City be and hereby are authorized and empowered to sell bonds of this Company to the aggregate face value of One Hundred Thousand ($100,000) Dollars, and to deduct from the price received therefor a commission of Two (2%) Per Cent., provided, however, that the net price received by this Company for each One Thousand Dollar ($1,000) Bond shall not be less than Nine Hundred and Fifty ($950) Dollars; and

RESOLVED FURTHER, That the Treasurer of this Company be and hereby is authorized and instructed to deliver said bonds in whole or in part on the written order of the said Howell & Wilkins, and to receive and receipt for all amounts paid by them into the treasury of the Company on account of sales of said bonds.

.....

Form 94.—Resolution. To Purchase Property.

.....

RESOLVED, That the President and Treasurer of the Company be and hereby are authorized and instructed to consummate the purchase of the West Valley Marl Beds in accordance with the terms of the option under which said Beds are now held, and that they be further authorized and empowered to do all such things for and on behalf of the company and in its name as may be necessary thereto.

.....

(See Minutes, Form 113.)

Form 95.—Resolution. For Settlement of Claim.

.....

RESOLVED, That the President and Secretary of this Company, acting with its Counsel, be hereby instructed to use their best efforts to arrive at some favorable settlement with the employees of this Company injured in the recent accident, and that said officers be hereby fully authorized and empowered to accept any settlement deemed by them satisfactory and approved by the Counsel of the Company, provided that the total payments involved therein shall not exceed the sum of Twenty-five Hundred ($2500) Dollars.

.....

(See Minutes, Form 114.)

Form 96.—Resolution. Ratifying Sale of Property.

.....

WHEREAS, The President and Treasurer of this Company have heretofore on the 21st day of July, 1908, sold and disposed of the machinery, tools and other apparatus belonging to this Company and then in the premises at 235 Main St., Newark, New Jersey, the amount realized from such sale—Two Thousand, Seven Hundred and Fifty ($2.750) Dollars—having been duly paid into the treasury of this Company; and

WHEREAS, Said sale was made without authorization from this Board, owing to the absence from the city of a majority of its members; and

WHEREAS, In the opinion of the Board such sale was for the best interests of the Company, and the action of said officers in consummating the same therefore meets with its approval:

NOW, THEREFORE, BE IT RESOLVED, That the action of the said officers of this Company in selling and disposing of the aforementioned property as aforesaid be and hereby is ratified, approved and confirmed, and that said action be accepted as the action of the Company, and the assignments thereof be ratified, confirmed and accepted as the duly executed assignments of this Company, of the same force and effect as if entered into under direct authorization of this Board.

.....

Form 97.—Resolution. For Removal of Officer.

.....

WHEREAS, In the opinion of this Board the interests of the Company do not permit the continuance, in his present official position, of its President, John Farraday; and

WHEREAS, The said John Farraday has refused to resign although requested thereto by members of this Board duly authorized thereunto:

NOW, THEREFORE, BE IT RESOLVED, That exercising its statutory power the Board of Directors of the Manly Electric Corporation does hereby remove the said John Farraday from his official position as President of this Company, and declares said office vacant and said John Farraday no longer authorized to act on its behalf in any capacity; and

RESOLVED FURTHER, That the Secretary of the Company be and hereby is instructed to at once notify the said John Farraday of his removal from the presidency of this Company, and to give such other proper and public notice of said removal as may in his judgment be necessary to protect the interests of the Company.

Form 98.—Resolution. For Sale of Entire Assets.

.....

WHEREAS, A proposition has been made by the Trustees of the New Hampshire Granite Company to purchase the entire property and business of this Company for Ten Thousand ($10,000) Dollars in cash and Forty Thousand ($40,000) Dollars in stock of the said proposed corporation as set forth in their written proposition heretofore ordered to be spread upon the minutes of this meeting; and

WHEREAS, The stockholders of this Company in duly assembled meeting at which all the voting stock of the Company was represented in person or by proxy, did by resolution unanimously carried, approve said sale and authorize and instruct this Board to accept said proposition:

NOW, THEREFORE, BE IT RESOLVED, That the said proposition be and the same is hereby accepted by this Company on the terms set forth in said written proposition as entered upon the minutes of this meeting, and the President and Secretary of the Company are hereby empowered and instructed to execute all proper instruments to carry such acceptance into effect, and on behalf of this Company to receive the said Ten Thousand ($10,000) Dollars in cash and Forty Thousand ($40,000) dollars in stock of the said New Hampshire Granite Company, and to do all such other things in connection with such sale and the said transfer of property as may be found necessary for its proper consummation.

.....

(For corresponding stockholders' resolution, see Form 81.)

CHAPTER XXXII.

INCIDENTAL FORMS.

The secretary will find a list of stockholders, giving the stock held by each and arranged as in the following form, of much convenience for use at stockholders' meetings. This does not take the place of the statutory list required in some states (See § 81), but is merely for use in calling the roll or noting those present and absent, and preserving in compact form a record of the results.

Form 99.—Secretary's List of Stockholders.

INDUSTRIAL SUPPLY COMPANY.

LIST OF STOCKHOLDERS.
October 10, 1908.

NAME.	SHARES OWNED.	NOT PRESENT	PRESENT IN PERSON.	PRESENT BY PROXY.	NAME OF PROXY.
Adrian, Henry F.	100	..	100	..	
Ahrens, Sam'l T..	50	50	..	..	
Allison, Daniel H.	75	..	..	75	George T. Foster.
Barry, John J....	85	..	85	..	
Belmont, Maurice	25	..	25	..	
Colville, Frederick	100	..	100	..	
Daniels, E. F....	100	50	..	50	Harry H. Winters.
Greenwald, Martin	80	..	..	80	William Greenwald.
Hughes, Cora H..	150	..	150	..	
Lawrence, Edw...	25	25	..	..	
McCabe, Albert..	50	..	..	50	W. B. Wells.
Mullins, Chas. D.	35	..	35	..	
Price, Harvey....	200	..	200	..	
Rollins, James H.	50	..	..	50	Henry Siebert.
Shanley, J. J.....	25	25	..	..	
Sherman, B. L...	150	..	150	..	
Wiley, Edwin H..	100		..	100	Harry T. French.
Zimmer, Henry T.	100	..	100	..	
	1,500	150	945	405	

The list as shown is after the secretary's notations have been made. The data of the first two columns are taken from the stock books of the company before the time of the meeting. If a stockholder is not represented at the meeting, a check mark, or, better, the number of his shares, is entered in the third column. If present in person, the number of shares owned is entered in the fourth column. If represented by a proxy, the number of his shares is entered in the fifth column and the name of the person holding the proxy in the last column.

It will be noted that in the foregoing list, a portion of the holding of one stockholder is entered in the column "Not Present" and a portion is entered in the column "Present by Proxy." This shows that the party gave a proxy for a portion of his stock and that the person to whom this was given was present, while the remaining stock was not represented. (See Form 66.)

The list when the secretary's notations are finished, gives a complete record of the attendance at the meeting. The combined footing of columns four and five give the number of shares represented, which added to the footing of column three must, if the work is correct, give the total stock outstanding and equal the footing of column two.

At the annual meeting routine work is apt to be gone through with some rapidity and the secretary does not always have time for its proper record unless provision is made therefor prior to the meeting. For this purpose outline minutes are frequently prepared.

Form 100.—Outline Minutes for Annual Meeting.

MINUTES.

INDUSTRIAL SUPPLY COMPANY
of New York.

Annual Meeting of October 10, 1908.

Meeting called to order at..... A. M. by.....
who presided over meeting. Officiating Secretary.....

Present at meeting in person.....Shares. By Proxy.....Shares. Total.....Shares. (See Form 99 for this data.) Necessary for quorum, 751 Shares.

Copy of notice of meeting submitted with secretary's certificate of due service attached. Ordered spread upon minutes.

Minutes of previous meeting read and.....

Annual Reports:
President's.
Treasurer's.
Special.

Election of Directors. Nominated:
.....
.....
.....

Inspectors of Election:
.....
.....

Results: (*To be taken from inspector's certificate of election; see Form 102.*)

New business.

.....

These outline minutes are best prepared on sheets of loose paper with ample room between the items for the interpolation of any comments or additional matter. They are merely intended to afford memoranda from which the secretary will later write out the complete minutes. If, through unexpected changes or omissions. any portion of the outline minutes cannot be used, the secretary has merely to draw his pencil through the part superseded.

In some states the statutes require that the election of directors must be conducted by inspectors. Elsewhere they or similar officers are employed as a matter of convenience. (See §§ 90, 91.)

Usually inspectors are not sworn, but in some states this is required by the statutes or is a matter of custom. The oaths and certificates of inspectors of election in the general form employed in New York and New Jersey follow. They may be easily modified to meet any statutory requirements of other states.

Form 101.—Oath. Inspectors of Election. New York.

.....

OATH OF INSPECTORS OF ELECTION.

STATE OF NEW YORK, }
County of New York, } *ss.:*

We, the undersigned, duly appointed to act as Inspectors of Election at the annual meeting of the stockholders of the Hudson River Navigation Company, to be held in the office of the Company, No. 72 Broadway, New York, on the 2nd day of November, 1908, being severally duly sworn, depose and say and each for himself deposes and says that he will faithfully execute the duties of Inspector of Election at such meeting with strict impartiality and according to the best of his ability.

FRANK H. ASTOR.
DAVID J. MCKANE.

Severally sworn to before me this
2nd day of November, 1908.

ALLEN T. BAUVELT,
Notary Public in and for New York County.

{ NOTARIAL SEAL. }

.....

The oath of the inspectors of election and their certificate as to the election results—as given in the form which follows—are usually written, as a matter of convenience, on one sheet of paper, the oath preceding the certificate.

Form 102.—Certificate. Inspectors of Election. New York.

.....

CERTIFICATE OF INSPECTORS OF ELECTION.

We, the undersigned, duly appointed Inspectors of Election of the Hudson River Navigation Company of New York City, New York, do hereby certify that at the regular annual meeting of said corporation, held in the office of the Company, No. 72 Broadway, New York City, on the 2nd day of November, 1908, a quorum being present, we being first duly sworn by oath hereunto annexed, did conduct the election for directors of said corporation and that the result of the vote taken thereat was the election by the plurality vote set opposite their respective names, of the following directors:

NAMES.	VOTES RECEIVED.
Charles E. Shepherd.....	2,135
Frank J. Platt.....	2,000
Harry P. Tucker.....	1,970
Edward T. Bowles.....	1,875
Henry P. Moody.....	1,825
George McDonald.....	1,825
Albert T. Calkins.....	1,800

IN TESTIMONY WHEREOF, we have executed this certificate this 2nd day of November, 1908.

FRANK H. ASTOR,
DAVID J. MCKANE.

Present at meeting in person.....Shares. By Proxy.....Shares. Total.....Shares. (See Form 99 for this data.) Necessary for quorum, 751 Shares.

Copy of notice of meeting submitted with secretary's certificate of due service attached. Ordered spread upon minutes.

Minutes of previous meeting read and.....

Annual Reports:
President's.
Treasurer's.
Special.

Election of Directors. Nominated:
.....
.....
.....

Inspectors of Election:
.....
.....

Results: (*To be taken from inspector's certificate of election; see Form 102.*)

New business.

.....

These outline minutes are best prepared on sheets of loose paper with ample room between the items for the interpolation of any comments or additional matter. They are merely intended to afford memoranda from which the secretary will later write out the complete minutes. If, through unexpected changes or omissions. any portion of the outline minutes cannot be used, the secretary has merely to draw his pencil through the part superseded.

In some states the statutes require that the election of directors must be conducted by inspectors. Elsewhere they or similar officers are employed as a matter of convenience. (See §§ 90, 91.)

Usually inspectors are not sworn, but in some states this is required by the statutes or is a matter of custom. The oaths and certificates of inspectors of election in the general form employed in New York and New Jersey follow. They may be easily modified to meet any statutory requirements of other states.

Form 101.—Oath. Inspectors of Election. New York.

.....

OATH OF INSPECTORS OF ELECTION.

STATE OF NEW YORK, }
County of New York, } *ss.:*

We, the undersigned, duly appointed to act as Inspectors of Election at the annual meeting of the stockholders of the Hudson River Navigation Company, to be held in the office of the Company, No. 72 Broadway, New York, on the 2nd day of November, 1908, being severally duly sworn, depose and say and each for himself deposes and says that he will faithfully execute the duties of Inspector of Election at such meeting with strict impartiality and according to the best of his ability.

FRANK H. ASTOR.
DAVID J. MCKANE.

Severally sworn to before me this
2nd day of November, 1908.

ALLEN T. BAUVELT,
Notary Public in and for New York County.

{ NOTARIAL SEAL. }

.....

The oath of the inspectors of election and their certificate as to the election results—as given in the form which follows—are usually written, as a matter of convenience, on one sheet of paper, the oath preceding the certificate.

Form 102.—Certificate. Inspectors of Election. New York.

.....

CERTIFICATE OF INSPECTORS OF ELECTION.

We, the undersigned, duly appointed Inspectors of Election of the Hudson River Navigation Company of New York City, New York, do hereby certify that at the regular annual meeting of said corporation, held in the office of the Company, No. 72 Broadway, New York City, on the 2nd day of November, 1908, a quorum being present, we being first duly sworn by oath hereunto annexed, did conduct the election for directors of said corporation and that the result of the vote taken thereat was the election by the plurality vote set opposite their respective names, of the following directors:

NAMES.	VOTES RECEIVED.
Charles E. Shepherd	2,135
Frank J. Platt	2,000
Harry P. Tucker	1,970
Edward T. Bowles	1,875
Henry P. Moody	1,825
George McDonald	1,825
Albert T. Calkins	1,800

IN TESTIMONY WHEREOF, we have executed this certificate this 2nd day of November, 1908.

FRANK H. ASTOR,
DAVID J. MCKANE.

Form 103.—Acknowledgment of Inspectors' Certificate.

.....

STATE OF NEW YORK, }
County of New York, } *ss.:*

On this 2nd day of November, 1908, before me personally came Frank H. Astor and David J. McKane, to me known to be the persons described in and who executed the foregoing certificate and severally acknowledged that they executed the same for the use and purposes therein set forth.

{ NOTARIAL SEAL. } ALLEN T. BAUVELT,
Notary Public in and for New York County.

.....

In New York the inspectors' oath and certificate must be filed in the county clerk's office. In New Jersey they are merely handed the secretary to be filed among the company archives.

Form 104.—Oath. Inspectors of Election. New Jersey.

.....

OATH OF INSPECTORS OF ELECTION.

STATE OF NEW JERSEY, }
County of Hudson, } *ss.:*

We, the undersigned, duly appointed Inspectors of the Morris Construction Company of Jersey City, New Jersey, being severally sworn, upon our respective oaths do undertake and swear that we will faithfully, honestly and impartially perform our duties as Inspectors at the election of directors of said Company, to be held in the office of the Company, No. 15 Exchange Place, Jersey City, New Jersey, on the 10th day of November, 1908, and that we will make a true report of the results of said election.

WALTER H. WILSON.
OSWALD J. MCCUTCHEON.

Subscribed and sworn to before me this
10th day of November, 1908.

{ NOTARIAL SEAL. } HARRY FENWALD,
Notary Public.

.....

Form 105.—Certificate. Inspectors of Election. New Jersey.

.....

INSPECTORS' CERTIFICATE OF ELECTION.

We, the undersigned, Inspectors of Election, duly appointed to conduct the election of directors of the Morris Construction Company of Jersey City, New Jersey, at the meeting of the stockholders thereof, held this day at the office of the Company, No. 15 Exchange Place, Jersey City, New Jersey, do hereby certify and report that we being first duly sworn by oath hereunto annexed, did hold and conduct the said election by ballot and in due form, and that the votes cast thereat were as follows:

NAME.	VOTES RECEIVED.
George A. Canfield	500
G. W. O'Brien	500
Harold W. Hunter	500
George T. Gravenor	500
Thomas F. Decker	450
Edward A. Miller	425
Samuel A. Webster	425

IN TESTIMONY WHEREOF, we have hereunto affixed our respective signatures this 10th day of November, 1908.

WALTER H. WILSON.
OSWALD J. MCCUTCHEON.

.....

When not required by statute the formality of swearing inspectors is usually dispensed with. An inspectors' report is, however, a convenient method of entering the results of the election upon the minutes, and the written report is therefore desirable. Its form under such circumstances might be as follows:

Form 106.—Certificate. Inspectors of Election. General.

.....

CERTIFICATE OF INSPECTORS OF ELECTION.

We, the undersigned, duly appointed Inspectors of Election of the Hamilton Machine Company of Philadelphia, Pennsylvania, to conduct the election of directors of said Company held this 14th day of November, 1908, at 3 o'clock P. M., in the office of the Company, No. 15 Exchange Place, Jersey City, New Jersey, do hereby certify and report that said election was conducted by us in due and proper form, and that the result of the vote taken thereat by ballot was the election by the plurality vote set opposite their respective names of the following directors:

NAMES.	VOTES RECEIVED.
E. L. Lambert	200
John C. Robinson	200
Walter S. Hall	200
William H. Sloane	200
Alvah H. Marshall	200

IN WITNESS WHEREOF, we hereunto affix our respective signatures this 14th day of November, 1908.

ARTHUR T. NEWMAN.
GEORGE HAYWOOD.

.....

A simple form of ballot for the annual meeting is as shown below. This is prepared before the time of the meeting, complete—when the candidates' names are known in advance—save as to signature and the number of shares voted.

Form 107.—Ballot. Annual Meeting.

.....

BALLOT.
MAXIM WATCH COMPANY.

Annual meeting, November 5, 1908.

I, the undersigned, hereby vote 125 shares of stock for the following named persons to serve as Directors for the ensuing year:

John H. Brown. Frank T. Jones.
Howard McCall. Fowler McVeigh.
Marvin H. Smith.

Signature,
HAROLD MCKAIN,
Proxy for Samuel H. Hilton.

.....

Where a more formal ballot is desired the following will serve:

Form 108.—Ballot. Annual Meeting. Formal.

.....

UNITED STATES STEEL CORPORATION.
Seventh Annual Meeting, April 20, 1908.

BALLOT.

The undersigned votes the number of shares noted in the subscription hereto as follows:

(1) In favor of approving and ratifying all purchases, contracts, acts, proceedings, elections and appointments by the Board of Directors or the Finance Committee, since the sixth annual meeting of the stockholders of the Corporation on April 15, 1907, including the purchase of the stock of the Tennessee Coal, Iron and Railroad Company, as set forth in the minutes of the Board of Directors, or of the Finance Committee, or in the Sixth Annual Report.

(2) For the following named persons, as Directors for the three years ending in 1911:

GEORGE F. BAKER, MARVIN HUGHITT,
WILLIAM E. COREY, DANIEL G. REID,
JOHN F. DRYDEN, JOHN D. ROCKEFELLER, JR.,
CLEMENT A. GRISCOM, NATHANIEL THAYER.

(3) For the firm of Price, Waterhouse & Co., as independent auditors, to audit the books and accounts of the Corporation at the close of the fiscal year ending December 31, 1908.

NAME.	NUMBER OF SHARES.	
	PREFERRED.	COMMON.
person .....in proxy for	.....	.....

CHAPTER XXXIII.

MINUTES OF CORPORATE MEETINGS.

The general form in which minutes are kept is a matter of custom. The details are determined by the secretary of the particular company. The headings should, however, always be sufficiently full and explicit to show at a glance whether the meeting is of stockholders or directors and whether it is a regular, special or adjourned meeting. The date of the particular meeting, though always stated in the body of the minutes, should also appear in the heading as a matter of convenience. (See Ch. XIX.)

The name of the corporation is frequently brought in at the head of every set of minutes. When this is not done the minute book should itself be very plainly stamped or marked with the name of the company, which should also appear on the title page of the book and again at the top of the first written page of minutes.

(a) STOCKHOLDERS' MEETINGS.

Form 109.—Annual Meeting of Stockholders.

.....

MIDVALE FOUNDRY COMPANY
of
New Jersey.

MINUTES OF REGULAR MEETING OF STOCKHOLDERS.
Held November 2nd, 1908.

The stockholders of the Midvale Foundry Company met in annual meeting in the office of the Company at Midvale, New Jersey, at 10 o'clock in the forenoon, November 2nd, 1908.

The meeting was called to order and presided over by Mr. Frederick H. Colgate, President of the Company. The Secretary of the Company, Mr. W. A. Thompson, acted as Secretary of the meeting.

The Secretary after noting the stockholders present, reported that out of a total of 5,000 shares of stock outstanding and entitled to vote at the

meeting, 4,900 shares were represented at the meeting; 3,500 shares in person and 1,400 shares by proxies filed with the Secretary.

The Secretary then read a copy of the notice of the meeting, with his certificate attached showing that a copy thereof had been mailed to each stockholder of record on or before the 17th day of October, 1908. He also presented copies of the "Newark Advertiser" and the "Jersey City Journal" under date of October 19th and October 26th, containing due advertisement of the meeting. The proof of notice as presented was ordered received and filed.

The Secretary produced the stock and transfer books of the Company, together with an alphabetical list giving the name, residence and number of shares of stock held by every stockholder entitled to vote in the election of directors. This list remained open to inspection during the election of directors and for the entire time of the meeting.

The minutes of the preceding annual meeting were then read and approved. The minutes of the special meeting of stockholders held September 10th, 1908, were also read and approved.

Upon motion duly seconded and carried, Messrs. W. B. Johnson and D. L. Boyd were appointed Inspectors of Election, were duly sworn, and the meeting then proceeded to the election of directors. The election was held by ballot and the polls were opened at 10:15 o'clock A. M. and closed at 11:15 o'clock A. M.

The Inspectors thereupon presented their report in writing showing that Frederick H. Colgate, Benson R. Vale, William R. Buchanan, Malcolm R. Rigby and Robert H. McCarter had received a plurality of all the votes cast, and the said parties were thereupon declared to be the duly elected directors of the Company for the ensuing year and until the election of their successors.

The annual report of the President was then presented and upon request was read by him. The report was by motion unanimously carried, ordered received and filed.

The Treasurer's annual report was submitted, and, no objection being offered, was ordered received and filed.

The report of the committee appointed at the special meeting of stockholders held September 10th, 1908, to examine the accounts of the Company, was received, and by motion its findings were approved and the report ordered received and filed.

There being no further business before the meeting, it was adjourned.

FREDERICK H. COLGATE, President. W. A. THOMPSON, Secretary.

(See "Annual Meeting" Ch. X.)

Form 110.—Special Meeting of Stockholders.

MIDVALE FOUNDRY COMPANY
of
NEW JERSEY.

MINUTES OF SPECIAL MEETING OF STOCKHOLDERS.
Held November 19th, 1908.

The stockholders of the Midvale Foundry Company assembled in special meeting in the office of the Company at Midvale, New Jersey, at 10 o'clock in the forenoon on the 19th day of November, 1908, pursuant to call of the President followed by due notice thereof to the stockholders.

The meeting was called to order by Mr. Frederick H. Colgate, President of the Company, the Secretary of the Company, Mr. W. A. Thompson, officiating as recording officer.

The entire capital stock of the Company was represented at the meeting, either in person or by proxy filed with the Secretary.

The Secretary presented the Call and Notice pursuant to which the meeting was held, with his certificate that said notice had been sent out not less than twenty days before the date of meeting. The Call and Notice were ordered spread upon the Minute Book immediately following the minutes of the meeting.

The President then stated briefly that the meeting was assembled to consider a proposition from the Midvale Steel Company for the consolidation of the two companies under the general name of the New Jersey Foundry Company, the new company to have a capitalization of One Million, Five Hundred Thousand ($1,500,000) Dollars and stock in both companies to be exchanged for stock of the new company, share for share.

A discussion of the proposition disclosed considerable opposition, mainly on the ground that the financial conditions of the Midvale Steel Company were not such as to make the desired consolidation advantageous.

Replying to this objection, the President stated that the financial statement of the Midvale Steel Company as presented in the proposition from that Company, apparently misrepresented its real condition, and suggested that an adjournment of the meeting be taken until 10 o'clock A. M. on the following day, in order to permit the officers of the Midvale Steel Company to furnish authoritative information on this point.

No objection being offered to this suggestion, the President declared the meeting adjourned to assemble again in the office of the Company at 10 o'clock A. M., November 20th, 1908.

FREDERICK H. COLGATE, President. W. A. THOMPSON, Secretary.

Call and Notice of meeting appended hereto in accordance with the requirements of the foregoing minutes.

W. A. THOMPSON, Secretary.

(See "Special Meetings" Ch. XI.)

Form 111.—Adjourned Meeting of Stockholders.

MIDVALE FOUNDRY COMPANY
of
NEW JERSEY.

MINUTES OF ADJOURNED SPECIAL MEETING OF STOCKHOLDERS.
Held November 20th, 1908.

(Adjourned from meeting of November 19th, 1908.)

The stockholders of the Midvale Foundry Company met in adjourned meeting in the office of the Company at Midvale, New Jersey, at 10 o'clock in the forenoon on the 20th day of November, 1908.

Mr. Frederick H. Colgate called the meeting to order and presided. Mr. W. A. Thompson acted as Secretary of the meeting.

The stockholders of the Company were all present in person or by proxy.

The minutes of the special meeting of stockholders held on the preceding day and from which the present meeting was adjourned, were read for the information of those present.

The President then presented and read to the meeting a letter from the Treasurer of the Midvale Steel Company, explaining satisfactorily the financial conditions of that Company.

The President further stated that the proposed consolidation had already been authorized, on the terms set forth, by the stockholders of the Midvale Steel Company and that if it were also authorized by the Midvale Foundry Company, the proper action would be taken by the Boards of Directors and officials of the respective companies to comsummate the consolidation at the earliest possible moment.

The following resolution was then offered by Mr. Charles H. Curtis:

(*See Form 82.*)

After a short discussion, Mr. D. V. Jackson moved that the resolution be adopted. The motion was seconded by Mr. Henry B. Vale, and was carried by unanimous vote.

There being no further business before the meeting, the President declared it adjourned.

FREDERICK H. COLGATE, President. W. A. THOMPSON, Secretary.

.....

The proposition for consolidation presented at the special meeting of the stockholders of the Midvale Foundry Company does not appear appended to the minutes of that meeting as it would properly appear in the minutes of the directors' meeting at which final action upon it is taken, and does not require to be brought into both minutes.

(b) DIRECTORS' MEETINGS.

The general form of directors' minutes is the same as for those of stockholders' meetings. It is, however, customary to enter the names of those present, which is not usually done in the case of stockholders' meetings.

Form 112.—Regular Meeting of Directors.

.....

FAIRFIELD CEMENT COMPANY
of
NEW YORK.

MINUTES OF REGULAR MEETING OF DIRECTORS.
Held October 14th, 1908.

The Board of Directors of the Fairfield Cement Company of New York assembled in regular meeting in the office of the Company, Fairfield, New York, at 3 o'clock in the forenoon on Wednesday, October 14th, 1908.

The meeting was called to order and presided over by William A. Pierce, President of the Company. Mr. Morris H. Goodrich, Secretary of the Company, acted as Secretary of the meeting.

Present: Messrs. William A. Pierce, John H. Pickering, Walter S. Laighton, John K. Bates, Fred N. Barney and Morris H. Goodrich, constituting a quorum of the Board.

The minutes of the preceding meeting of September 9th, 1908, and of the meetings of September 15th, and of September 18th and September 25th adjourned therefrom, were read and approved.

The President reported that the new plant of the Company at the West Valley marl beds was progressing rapidly and should be completed on or before December 15th. He also stated that arrangements had been made for the installation of the necessary machinery and for the general equipment of the plant, and that it was hoped it would be in full operation before the close of the year.

The President also reported that the Deering Construction Company was about to contract for a large amount of cement, aggregating nearly One Hundred Thousand (100,000) barrels, with deliveries extending over a year, and that he felt confident that if the Company would make the proper concessions as to price that the contract could be secured, and asked that the Board authorize him to make such concessions—not exceeding fifteen cents per barrel—as might be necessary to secure said contract.

The President further reported that additional funds amounting to about Forty Thousand ($40,000) Dollars would be required for the completion of the West Valley plant not later than December 15th, 1908, and asked the Board to take such action as might be necessary to secure these needed funds.

The Treasurer then submitted a report giving the receipts and expenditures for the past month and showing a present cash balance on hand of $5,525.25.

Mr. Arthur Hurd, Counsel for the Company, reported that his investigations of the titles of the marl beds lying to the north of the Company's West Valley beds had disclosed some apparent imperfections, and he therefore advised the Board to postpone the consummation of the purchase of these beds until the titles were put in satisfactory shape.

The President's recommendations were then taken up, and after some discussion the President was authorized by motion unanimously carried, to make such discounts to the Deering Construction Company—not exceeding fifteen cents per barrel—as might be necessary to secure the contract mentioned.

The matter of finance for the West Valley plant was by unanimous consent deferred until the next meeting of the Board.

The report of the Company's Counsel in regard to the marl beds north of the West Valley beds was then taken up for discussion. Mr. Walter S. Leighton urged that no lengthy delay should be permitted, stating that he was personally cognizant of the fact that other parties were desirous of securing these same marl beds and that the present option under which the beds were held would expire in three weeks from date and he was positive could not be renewed at anything like the present option price. Mr. Arthur Hurd, Counsel for the Company, thereupon stated that his investigations could be completed inside a week, and on motion duly carried, the meeting was adjourned to assemble again in the office of the Company, October 21st, at 3 o'clock P. M.

WILLIAM A. PIERCE, President. MORRIS H. GOODRICH, Secretary.

.....

(See "Meetings of Directors," Ch. XV.)

Form 113.—Adjourned Meeting of Directors.

FAIRFIELD CEMENT COMPANY
of
NEW YORK.

MINUTES OF ADJOURNED MEETING OF DIRECTORS.
Held October 21st, 1908.

(Adjourned from regular meeting of October 14, 1908.)

The Board of Directors of the Fairfield Cement Company met in adjourned meeting in the office of the Company at Fairfield, New York, at 3 o'clock in the afternoon, Tuesday, October 21st, 1908.

The meeting was called to order and presided over by the President, Mr. William A. Pierce. The Secretary of the Company, Mr. Morris H. Goodrich, acted as Secretary of the meeting.

There were present Messrs. William A. Pierce, John H. Pickering, Walter S. Laighton, John K. Bates, Fred N. Barney, Silas H. Harvey and Morris H. Goodrich, constituting a quorum of the Board.

The minutes of the board meeting of October 14th, 1908, were read for the information of those present.

After the reading of the minutes, Mr. Arthur Hurd, Counsel for the Company, reported that his investigation of the titles of the marl beds lying north of the West Valley beds had been completed, that the defects to which he had referred in his previous report had been overcome, that the titles were now in good shape, and that the purchase of the beds could be safely consummated.

Thereupon on motion of Mr. John H. Pickering, seconded by Mr. Walter S. Laighton and carried by unanimous vote, the following resolution was adopted:

(*See Form 94.*)

There being no further business before the meeting, it was adjourned.

WILLIAM A. PIERCE,
President.

MORRIS H. GOODRICH,
Secretary.

Form 114.—Special Meeting of Directors.

FAIRFIELD CEMENT COMPANY.
of
NEW YORK.

MINUTES OF SPECIAL MEETING OF DIRECTORS
Held December 7th, 1908.

The Board of Directors of the Fairfield Cement Company of New York met in special meeting pursuant to due call and waiver, in the office of the Company at Fairfield, New York, at 3 o'clock in the afternoon on the 7th day of December, 1908.

The meeting was called to order and presided over by Mr. William A. Pierce, President. The Secretary of the Company, Mr. Morris H. Goodrich, recorded the proceedings of the meeting.

There were present Messrs. William A. Pierce, John H. Pickering,

Walter S. Laighton, John K. Bates, Fred N. Barney, Silas H. Harvey and Morris H. Goodrich, constituting a quorum of the Board.

The Secretary presented the call and waiver signed by every member of the Board, pursuant to which the meeting was held. In the absence of objection, the President ordered the call and waiver to be spread upon the Book of Minutes immediately following the minutes of the present meeting.

The President then reported that a very serious accident had occurred at the Fairfield plant, the boilers in the power house having exploded, tearing out one side of the power house and seriously injuring three of the employees of the Company. He further stated that new boilers for the Fairfield plant had been ordered at least two months ago and that the old boilers were only being used until they could be replaced with these new boilers. * * * He then called upon Mr. Arthur Hurd, Counsel for the Company, for a statement as to the legal situation.

Mr. Hurd said that in his opinion the injured employees had a clear case against the Company for damages, which might be heavy as the boilers were known to be in defective condition, and suggested that a settlement out of the courts would probably be politic as well as economical.

After some discussion the following resolution was adopted by unanimous vote:

(*See Form 95.*)

There being no further business before the meeting, it was declared adjourned.

WILLIAM A. PIERCE,
President.

MORRIS H. GOODRICH,
Secretary.

Call and Waiver of Notice appended hereto.

MORRIS H. GOODRICH,
Secretary.

(See "Meetings of Directors," Ch. XV.)

CHAPTER XXXIV.

ANNUAL REPORTS.

Under the laws of most of the states corporations are compelled to make certain reports to the authorities, mainly for purposes of taxation. Blanks for such reports are supplied by the state or local authorities and may usually be filled with but little trouble. A knowledge of the tax laws is, however, necessary at times in order to avoid excessive taxation, and in all cases where the amounts involved are material, legal advice should be employed in the preparation of these reports. On account of their wide variation in form in the different states, these tax reports are not presented here, the present chapter being entirely confined to the reports made to the stockholders at their annual meeting. The forms given are merely suggestive, as reports will necessarily vary with the conditions.

The usual reports submitted to the stockholders at their annual meeting are those of the president and treasurer. If matters of special interest or importance have occurred within the province of other officials, they may be called upon for reports. If any stockholders' committees have been appointed for special investigations or other purposes, they will also usually report to the annual meeting.

The president's report is intended to give a general review of the company's operations during the preceding year and a statement of its condition at the time of the report. (See §§ 89, 151.)

Form 115.—President's Annual Report to Stockholders.

FREEMAN HARDWARE COMPANY.

PRESIDENT'S ANNUAL REPORT.

To the Stockholders of the
FREEMAN HARDWARE COMPANY.:

GENTLEMEN:—It gives me pleasure to report that notwithstanding adverse financial conditions, the present status of the Company is thoroughly sound and at least reasonably satisfactory. Our profits have not been as large as for the preceding year, the Treasurer's report showing a net profit of $28,408.87 for the present year as against $56,704.83 for the year ending January 10, 1907, but this difference, though material, is fully accounted for by the general financial disturbance which so seriously affected the business of the Company during the latter portion of 1907, and by a series of strikes which occurred among the employees of the Company in the early part of the same year.

The details of the strikes referred to are already familiar to most of you. They were primarily brought about by a demand that none but union workers should be employed in the factories of this Company,—a demand which was refused, as it would have resulted in the discharge of old and tried employees of the Company with whom no other fault was found than that they were not members of the union. In this position we believed then and still believe that we had the full and hearty support of the stockholders of the company. The result was, however, as stated, a strike which seriously crippled the producing power of the Company and which when settled broke out again on various pretexts, no less than three separate times. The strikes were, however, finally brought to a termination with some concessions to the men as to hours but without relinquishment of the principle on which the Company took its stand, i. e. the right to employ any capable workman regardless of membership or lack of membership in a union. The effect of the strikes was to reduce the net earnings of the Company for the first half of 1907 to $15,275.25 as against $24,762.24 for the first half of 1906.

The financial conditions which have existed for the larger part of the last six months of the fiscal year are too recent and too familiar to require more than a passing reference. The stagnation in the hardware trade generally has been pronounced and continued and we believe that the showing made by this Company will surpass that of any other manufacturing hardware company of the United States.

Advantage was taken of the enforced leisure caused by the depression of business during the latter part of 1907, to thoroughly overhaul the Company's entire plant and equipment, and these are now in better shape than they have been for years. Also some few additions have been made to the plant, giving additional and much needed room for our finishing and assembling work.

In conclusion I would state that the present outlook for the Company is exceedingly favorable. Notwithstanding the depression which still exists, orders are coming in at a satisfactory rate, the Company's plant is now operating on full time and with a full complement of employees, and it is the belief of the officers of the Company that the year ending January 10, 1909, will prove one of the most prosperous in the history of the Company.

Respectfully submitted,

HENRY H. FREEMAN,
President.

New York City, N. Y.,
January 10, 1908.

If the president's report is read, it gives an opportunity during its reading or at its end for stockholders' questions and the explanation of any points which are not entirely clear in the report.

Form 116.—Treasurer's Annual Report to Stockholders.

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FREEMAN HARDWARE COMPANY.

TREASURER'S ANNUAL REPORT.

PROFIT AND LOSS STATEMENT.

Year ending January 10, 1908.

GROSS SALES			$235,125.72
Returns and allowances to be deducted			9,875.24
			$225,250.48
COST OF SALES, including manufacturing, purchase costs, freight, etc.			135,154.24
GROSS PROFITS FROM SALES			$90,096.24
Deduct:			
SELLING EXPENSES:			
Salaries of sales force	$10,750.00		
Commissions	2,895.25		
Traveling expenses	7,962.50		
Advertising	5,125.75		
Miscellaneous items	1,250.00		
Total Selling Expenses		$27,983.50	
GENERAL AND ADMINISTRATIVE EXPENSES:			
Salaries, officers	$12,000.00		
office employees	7,500.00		
Office supplies	785.25		
Postage	425.34		
Telephone and telegrams	325.40		
Depreciation	250.00		
Miscellaneous	250.74		
Total General and Administrative Expenses		$21,536.73	$49,520.23
			$40,576.01
INTEREST, DISCOUNTS AND ALLOWANCES:			
Interest on bonds ($100,000 at 6%)	$6,000.00		
Discount on sales	$7,542.25		
" " purchases	4,125.35	3,416.90	
Net interest charges		$9,416.90	
Allowance for doubtful accounts		2,750.24	$12,167.14
NET PROFITS, year ending Jan. 10, 1908			$28,408.87

BALANCE SHEET.

January 10, 1908.

ASSETS.

REAL ESTATE:			
Land—20 acres at Mahwah, N. J.	$7,500.00		
Factory buildings at Mahwah, N. J.	95,275.84		
Store site, New York	80,000.00		
Building, New York	40,000.00		$222,775.84
FACTORY EQUIPMENT:			
Machinery	$65,249.87		
Belting, shafting, etc.	5,742.24		
Small tools	1,215.55		72,207.66
STORE EQUIPMENT:			
New York			5,742.25
OFFICE EQUIPMENT:			
New York	$1,200.00		
Mahwah, N. J.	250.00		1,450.00
TOTAL FIXED ASSETS			$302,175.75
CASH:			
In bank	$12,725.25		
On hand	336.25	$13,061.50	
ACCOUNTS RECEIVABLE:			
Trade debtors	$35,725.22		
Deduct reserve for doubtful accounts	1,250.25	34,474.97	
Notes Receivable		16,000.00	
INVENTORIES:			
Finished products and stock on hand	$85,242.25		
Goods in process	18,924.25		
Raw materials	70,262.24		
Factory supplies	1,982.25		
Fuel	1,250.24		
Miscellaneous small items	1,225.35	178,886.58	
TOTAL FLOATING ASSETS			$242,423.05
TOTAL OF ASSETS			$544,598.80

LIABILITIES.

CAPITAL STOCK:		
3,000 shares (par value $100 each)	$300,000.00	
BOND ISSUE:		
100 bonds (par value $1,000 each)	100,000.00	
TOTAL FIXED LIABILITIES		$400,000.00

ACCOUNTS PAYABLE:		
Trade creditors	$30,724.28	
Sundry personal accounts	525.20	
Notes payable	28,235.62	
TOTAL FLOATING LIABILITIES		$59,485.10
SURPLUS:		
Balance, Jan. 10, 1907	$56,704.83	
Net profit—year ending Jan. 10, 1908	28,408.87	85,113.70
TOTAL OF LIABILITIES		$544,598.80

Respectfully submitted,

JAMES H. WALLACE,
Treasurer.

New York City, N. Y.,
January 10, 1908.

The treasurer's annual report should give an accurate presentation of the financial results of the year's operation and of the existing financial condition of the company. To what detail it should extend will depend entirely on conditions. Business prudence usually forbids a complete statement even if it were otherwise desirable. (See § 154.)

The treasurer's report is presented to the meeting and is usually held open to inspection while the meeting is in progress but is seldom read unless it is short, or is to be specially considered, or the reading is requested. In the larger corporations the report is usually printed for distribution among the stockholders.

A committee report, unless of considerable length, is usually presented and read. If too lengthy to permit of this, and of sufficient importance to justify the expense, it is printed for distribution.

Form 117.—Report of Committee on By-Laws.

TERREBONNE CEMENT COMPANY.
REPORT OF COMMITTEE ON BY-LAWS.

To the Stockholders of the
TERREBONNE CEMENT COMPANY:

GENTLEMEN:—Your committee appointed at the last annual meeting of the stockholders to report any needed modification in the By-laws of this Company, begs to submit the following:

(1) We would recommend the addition of a by-law providing for an Executive Committee, to consist of three members of the Board of Directors, such Committee to have full control of the general business affairs of the Company in the interim between meetings of the Board.

(2) We would recommend that the present by-law relating to the regular meetings of the Board of Directors be so changed as to provide for quarterly meetings instead of monthly meetings as at present.

(3) We strongly disapprove of the suggested amendment to the by-laws whereby the amount of indebtedness which may be incurred by the directors on behalf of the Company at any one time is increased from $10,000 to $25,000, as we believe such change to be not only unnecessary but against the interests of the Company.

Respectfully submitted,

JAMES F. GOUGH,
HARKNESS B. LEWIS,
OLIVER H. SIMPSON,
Committee on By-laws.

PART VIII.—MISCELLANEOUS FORMS.

CHAPTER XXXV.

NOTICES.*

(a) Assessment Notices.

The following form of mailing notice is suitable when subscriptions are payable in instalments on demand of the board. (See Forms 1-12.)

Form 118.—Instalment Notice.

Instalment Notice.

HILBERT DESK COMPANY,
225 Main St., Grand Rapids, Mich.

Mr. Howard Burns,
Sparta, Mich.:

Dear Sir—You are hereby notified that by due resolution of the Board of Directors, an instalment of Ten Per Cent. on subscriptions to the stock of this Company has been called for, the amount thereof to be paid to the Treasurer of the Company on or before the 15th day of October, 1908.

Grand Rapids, Mich., October 1, 1908.

Henry H. Hilbert, Treasurer.

Shares subscribed, 25.
Amount of Assessment, $250.

Draw Checks payable to Treasurer.

The following form of assessment notice may be used either as a mailing or publication notice.

*Notices of corporate meetings are not considered in the present chapter as they have already been discussed in §§ 80, 96, 128 and Ch. XXIX.

Form 119.—Notice of Stock Assessment.

Assessment Notice.

BURNS REFRIGERATING COMPANY.

Notice is hereby given that assessment No. 2 of Fifteen Per Cent. on the subscribed Capital Stock of this Company has been called for by due resolution of the Board of Directors and is payable to the Treasurer of the Company on or before the 18th day of September, 1908.

Newark, New Jersey, August 15th, 1908.

Francis H. Wilson, Secretary.

Make Checks payable to Treasurer.

In some states the directors have statutory power to levy assessments under certain conditions. (See § 76.) In several of the western states the statutes prescribe the form of notice for such assessments. This is substantially as follows:

Form 120.—Assessment Notice.

RED GULCH MINING COMPANY,
Sacramento, California.

Notice is hereby given that at a meeting of the Directors held on the 10th day of October, 1908, an assessment of Ten Dollars per share was levied upon the Capital Stock of the corporation, payable on the 12th day of November, 1908, to the Treasurer of said Red Gulch Mining Company at its principal office, No. 584 J. Street, Sacramento, California. Any stock upon which this assessment shall remain unpaid on the 27th day of November, 1908, will be delinquent and advertised for sale at public auction, and unless payment is made before, will be sold on the 12th day of December, 1908, to pay said delinquent assessment together with costs of advertising and expenses of sale.

John H. McClelland, Secretary,
584 J. Street, Sacramento, Cal.

October 10, 1908.

This notice must be served upon each stockholder either personally or by mail, and must also be published.

In case assessments are not paid when due, public notice must be given before the delinquent stock can be sold. The statutory form of notice prescribed in several of the western states follows.

Form 121.—Notice. Sale of Delinquent Stock. Statutory.

RED GULCH MINING COMPANY,
Sacramento, California.

NOTICE.

There is delinquent on the following described stock on account of an assessment levied on the 10th day of October, 1908, the several amounts set opposite the names of the respective shareholders as follows:

NAME	NUMBER OF CERTIFICATE.	NUMBER OF SHARES.	AMOUNT DUE.
Henry Jones	85	25	$250
William Elkins	97	50	$500
Howard Stanford	125	30	$300

And in accordance with law and an order of the Board of Directors of this Company made on the 27th day of November, 1908, so many shares of each parcel of said stock as may be necessary will be sold at the principal office of the Company, No. 584 J. St., Sacramento, California, on the 12th day of December, 1908, at 10 o'clock in the forenoon, to pay delinquent assessments thereon, together with costs of advertising and expenses of sale.

JOHN H. MCCLELLAND, Secretary,
584 J Street, Sacramento, Cal.

A general form of assessment notice to be used where the specific form is not prescribed by statute, is as follows:

Form 122.—Notice. Sale of Delinquent Stock. General.

BURNS REFRIGERATING COMPANY.

NOTICE OF SALE OF DELINQUENT STOCK.

Notice is hereby given that the undersigned, Treasurer of the Burns Refrigerating Company, will on order of the Board of Directors and pursuant to the statutes in such case made and provided, sell at public auction on the 2nd day of November, 1908, at 2 o'clock in the afternoon at the office of the Company, 345 Broad St., Newark, New Jersey, Twenty (20) Shares of the stock of said Company now standing in the name of Howard T. Carleton, or so many of said shares as may be sufficient to satisfy the unpaid assessment on said shares amounting to Three Hundred ($300) Dollars, and also the interest thereon from the 18th day of September, 1908, to the date of sale, and all necessary incidental charges.

Fifty ($50) Dollars per share has already been paid the Company on said stock.

HOWARD W. BRONSON,
Treasurer.

Newark, N. J.,
October 1st, 1908.

(b) NOTICES OF DIVIDENDS.

In the smaller corporations dividend notices are usually sent by mail but are not published. In the larger corporations they are almost invariably published and are usually also sent by mail. (See § 169.)

Form 123.—Dividend Notice. Mailing.

CHARLESTON MILLING COMPANY,
785 Grand St., New York.

December 1, 1908.

DEAR SIR—You are hereby notified that the Directors of the Charleston Milling Company have this day declared the regular semi-annual dividend of Three Per Cent. on the Capital Stock of the Company, payable December 15th, 1908, to stockholders who appear of record at the close of business December 14th, 1908.

HARRY H. MCCALLUM,
Treasurer.

If the transfer books are closed preparatory to payment of dividends, the dates of closing and reopening should appear as in the following notice, which may be used either for publication or for mailing.

Form 124.—Dividend Notice. Publication.

MARTIN FOUNDRIES COMPANY.

NEW YORK, October 1, 1908.

DIVIDEND No. 25.

The Directors of the Martin Foundries Company have this day declared a quarterly dividend of One and One-half Per Cent. on the Capital Stock of the Company, payable October 30th, 1908, to stockholders of record at the close of business October 10th, 1908.

Transfer books will close October 10th, 1908, and reopen October 19th, 1908. Checks will be mailed.

JOHN H. MARTIN,
Treasurer.

When notice of dividends is by publication alone, an explanatory statement usually accompanies the dividend check. An announcement of this nature used by some of the larger corporations is given in the following form.

Form 125.—Notice Accompanying Dividend Check.

MARTIN FOUNDRIES COMPANY.

NEW YORK, October 30, 1908.

On October 1st, 1908, the Directors declared quarterly dividend No. 25 of One and One-half Per cent. upon the Preferred Stock of the Company, payable this day to stockholders of record of October 10th, 1908.

In accordance with permanent order on file, enclosed please find check for above dividend on the Preferred Stock standing in your name. No acknowledgment is necessary.

Kindly advise John J. Hart, Assistant Secretary, No. 575 Broadway, New York, of any change in your address, giving your old address as well as the new.

JOHN H. MARTIN,
Treasurer.

Dividend Check enclosed which please cash immediately.

The following publication notice is somewhat informal but sufficient.

Form 126.—Dividend Notice. (U. S. Steel Corp'n.)

UNITED STATES STEEL CORPORATION.

Dividend No. 19 of ½ of 1% on the Common Stock, for the quarter ending June 30, 1908, was declared July 28, payable September 30, to stockholders of record September 9. Transfer books close at 3 P. M. September 9 and reopen at 10 A. M., October 1, 1908.

RICHARD TRIMBLE,
Secretary.

This notice is signed by the secretary of the corporation—who in this case is also its treasurer. Usually, though not necessarily, dividend notices are signed by the treasurer.

Form 127.—Dividend Notice. Common Stock.

OFFICE OF
AMERICAN SMELTERS COMPANY.

No. 145 BROADWAY, NEW YORK CITY,
September 4, 1908.

QUARTERLY COMMON STOCK DIVIDEND No. 17.

The Directors of the American Smelters Company have this day declared a dividend of Two Per Cent. on the Common Capital Stock of the Company, payable October 15th, 1908, to stockholders of record September 28th, 1908. The books of the Company for the transfer of Common Stock will be closed at 3 o'clock P. M., September 28th, 1908, and will be reopened October 2nd, 1908.

M. W. ERICKSON,
Secretary.

The following publication notice covers the dividend on both common and preferred stock. This inclusion is not in any way objectionable, but at times, for the sake of greater emphasis and publicity, a separate notice for each dividend is preferred.

Form 128. Dividend Notice. Common and Preferred Stock.

McKINNEY COMPANIES.

The regular quarterly dividend of One Per Cent. on the Preferred Shares and the regular quarterly dividend of One Per Cent. on the Common Shares in the McKinney Companies will be paid January 2nd, 1909, to shareholders of record as they appear at the close of business December 14th, 1908.

The transfer books will be closed for four days only, December 15th, 16th, 17th and 18th, 1908.

HORACE C. KING,
Secretary.

Dated November 27, 1908.

Form 129.—Dividend Notice. Mailing Orders Requested.

SOUTHERN PACIFIC CO.,
120 Broadway, New York, November 11, 1908.

DIVIDEND No. 9.

A dividend of Three and a Half Per Cent. ($3.50 per share) was this day declared on the Preferred Stock of the Southern Pacific Company, payable on demand on and after the 15th day of January, 1909, to the stockholders of record at 3 o'clock P. M. on Thursday, December 31, 1908. The stock transfer books will not be closed for the payment of this dividend.

Stockholders who have not already done so are requested to file mailing orders for dividends with the undersigned, from whom blank orders can be had on application.

A. K. VAN DEVENTER,
Treasurer.

The mailing order referred to in the foregoing dividend notice is shown on the following page. The form as given is an exact reproduction of the original.

Form 130a.—Mailing Order for Dividends. Face.

STANDING DIVIDEND ORDER
FOR PREFERRED STOCK.
Dividend cheques will be mailed only for those stockholders who file properly executed dividend orders in the Company's New York Office.

To the Treasurer of **SOUTHERN PACIFIC COMPANY,**
120 Broadway, New York, N. Y.

Until this order shall be revoked in writing, please send by mail, in cheque payable

to the order of .....
ON LINE ABOVE WRITE NAME TO GO ON CHEQUE.

in envelope addressed as follows: (Please write distinctly.)
.....
NAME TO GO ON ENVELOPE.
.....
HOUSE NO. AND STREET, OR P. O. BOX.
.....
CITY OR TOWN AND STATE.

all dividends now due, or which may hereafter become due, on all stock now standing, or which may hereafter stand, on the books of your Company in.....name.

(Date) .....

Sign here exactly as name appears on certificate. .....

☞ When cheque is to be made payable to other than the signer, signature of the latter *MUST* be acknowledged before a Notary Public on the back of this order, and, if signed by an Attorney, Administrator, Executor, Guardian or Trustee it *MUST* be accompanied by satisfactory evidence of the signer's capacity. *(OVER)*

On the back of this mailing notice appears form for notarial acknowledgment as follows:

Form 130b.—Mailing Order for Dividends. Reverse.

NOTARIAL ACKNOWLEDGMENT OF SIGNATURE IS REQUIRED ONLY WHEN CHEQUE IS TO BE MADE PAYABLE TO OTHER THAN THE SIGNER.

State of .....
..... *of* ..... } *ss.:*
County of .....

☞ Notarial acknowledgment will not be required on dividend orders requesting cheques to be made payable to any *well-known* Trust Company, Bank or Bankers, as Follows:
"....(Name of Bank).....*for a/c of*.....(Name of Stockholder)....."

On this.....day of.....in the year one thousand nine hundred and.....before me personally came.....to me known, and known to me to be the individual described in, and who executed the within instrument and.....acknowledged that.....executed the same.

.....
.....
.....

ATTESTING OFFICER MUST IMPRESS HIS SEAL.

N. B. IF ACKNOWLEDGED OUT OF THE UNITED STATES SUCH ACKNOWLEDGMENT MUST BE MADE BEFORE AN AMERICAN DIPLOMATIC OR CONSULAR OFFICER. *(OVER)*

(c) Notices of Appointment.

When an election is held, it devolves upon the secretary to notify the officials-elect.

Form 131.—Notice of Election as Director.

ORVELLE MACHINE WORKS,
Trenton, New Jersey.

December 10, 1908.

Mr. George W. Bromleigh,
236 Greenwood Ave.,
Trenton, N. J.:

Dear Sir—You are hereby notified that at the annual meeting of the Orvelle Machine Works held this day, you were elected a member of its Board of Directors.

The next regular meeting of the Board will be held in the office of the Company, January 5, 1909, at 3 o'clock P. M., for the election of officers and for the transaction of such other business as may come before the meeting.

You are requested to be present and participate in that meeting.

Respectfully,
Martin B. Hereford,
Secretary.

Usually before the election of a director those interested assure themselves that he will serve if elected. In such case the notification need not ask his acceptance of the position. If, however, there is any uncertainty the notification of election should request a formal acceptance of the position. If the director-elect refuses to accept, his election is void, as he cannot be forced into office against his will.

Form 132.—Notice of Election as Director. Acceptance Requested.

BLACK DIAMOND DRILL COMPANY,
23 State St., Boston, Massachusetts.

October 10th, 1908.

Mr. Horace H. Fleming,
1716 State St.,
Boston, Mass.:

Dear Sir—At a meeting of the Directors of this Company held this 10th day of October, 1908, you were elected a member of the Board to fill the vacancy caused by the death of Mr. Frederick Colwell. Will you kindly indicate your acceptance of the position at your early convenience.

Respectfully,
Simrell B. Ives,
Secretary.

As a rule when corporate officials are elected, either the officers-elect are present at the meeting at which their election occurs, or are in such close personal touch with the corporate proceedings that formal notice of their election is unnecessary. If, however, a stranger is elected to an official corporate position, notice must be given.

Form 133.—Notice of Election as General Manager.

WILLIS OIL WELL COMPANY,
265 Madison Avenue, New York.

October 1st, 1908.

Mr. HENRY P. SIMPSON,
445 Greenwood Ave.,
Newark, New Jersey:

DEAR SIR—At a meeting of the Board of Directors of this Company held this day, you were elected General Manager of the Company at a salary of Twenty-four Hundred Dollars per annum, payable in monthly instalments of Two Hundred Dollars each, your employment and duties to begin on the 15th day of October, 1908, and the first instalment of your salary to be due and payable on the 15th day of the following month.

Will you kindly notify me without delay of your acceptance of the position and report for duty on the day above designated.

Yours very truly,
GERALD E. CONWAY,
Secretary.

If it is doubtful if the party elected will accept the position, his appointment and notice thereof are usually made tentative as in the following example.

Form 134.—Tender of Position. Sales Manager.

HOWARD DESK COMPANY,
25 Stone St., New York.

October 30, 1908.

Mr. WILLIS H. WALTERS,
225 Broadway, New York:

DEAR SIR—I am instructed by the Board of Directors to tender you the position of Sales Manager of this Company at a salary of $1,800 per annum, payable in monthly instalments of $150 each, your employment and duties to begin in case of your acceptance, on the 10th day of November, 1908.

Your early action in the matter will greatly oblige,
Yours very truly,
SHERWIN F. HAMILTON,
Secretary.

CHAPTER XXXVI.

FORMS OF RESIGNATIONS.

Resignations may be divided into two general classes —those which are so phrased as to be completely effective without an acceptance, which may be termed peremptory resignations, and those which are tentative in their nature and therefore not effective until accepted. (See §§ 113, 149.) The following form is of the latter nature.

Form 135.—Resignation of Director.

To the Board of Directors of the
HOWARD SCALE COMPANY:

GENTLEMEN—On account of my continued ill health, which prevents my proper attention to the duties of the position, I hereby tender my resignation as a member of your body.

Very respectfully,
HENRY H. GALE.

New York City,
September 30, 1908.

If a resignation of this kind is accepted without qualification, its effect is immediate and the resigning director, though present at the meeting, ceases to be a director at the moment the resolution or motion of acceptance is adopted. If it is desired to avoid this, acceptances may be phrased "to take effect at the close of the meeting." It may be noted in this connection that a director retiring by resignation can not legally vote on his own successor. The vacancy does not exist until his resignation is effective and thereafter he is not a director.

Dummy directors are sometimes elected to fill a position or vacancy in the board until a permanent incumbent

is elected. In such case the dummy director's resignation in tentative form is usually secured at the time of his election and is placed on file. Then when a suitable person for permanent director has been found, the resignation on file is accepted and the successor is at once elected. The following form of resignation is commonly used under such circumstances.

Form 136.—Resignation of Director. Effective on Acceptance.

To the Board of Directors of the
HARVARD PUBLISHING COMPANY:

GENTLEMEN—I hereby tender my resignation as a member of your body, to take effect upon acceptance.

Respectfully,

FRANK MCCLELLAND,

New York City,
September 1st, 1908.

This resignation holds good until acceptance or until the party's term as director expires, unless sooner withdrawn. If the party is again elected as a director, his old resignation is of no further effect and must be renewed if his same uncertain tenure of office is to be maintained. It must be remembered, however, that a party tendering such a resignation has the right to withdraw it or to revoke it at any time prior to its acceptance.

The final clause of the foregoing resignation, while conventional, is of no direct effect. A "tendered" resignation cannot take effect until accepted.

Form 137.—Resignation of Director. Peremptory.

To the Board of Directors of the
FRANKLIN ELECTRIC CORPORATION:

GENTLEMEN—I hereby resign my position as a director of the Franklin Electric Corporation, my resignation to take immediate effect.

Respectfully,

WILLIAM H. COLLINS.

New Brighton, Pa.,
October 22, 1908.

This resignation terminates the official status of the party signing same as soon as the document is filed with the secretary of the company. No action of the board is required nor can the board in any way prevent its effect. This peremptory form of resignation is often employed in cases where a director wishes to escape responsibility for some proposed action of the board or wishes to express his disapproval of some board action. It does not relieve him from any responsibility for past actions but does relieve him from responsibility for any future board actions.

A resignation may be made effective at a future date as in the following form. The object of such a deferred resignation is usually to give time for the selection of a suitable successor.

Form 138.—Resignation of Director. Future Date.

To the Board of Directors of the
COOPERSTOWN TANNERY:

GENTLEMEN—I hereby resign my membership in your body, such resignation to be effective October 21, 1908.

Respectfully,

HOWARD MCCALL.

Cooperstown, New York,
October 1st, 1908.

When, as occasionally happens, some difficulty has arisen between the directors and an official, and this latter wishes a vote of confidence or an expression of the feeling of the board towards him, he will hand in a tentative resignation as in the following form.

Form 139.—Resignation of President. Conditional.

To the Board of Directors of the
STANDARD MILLING COMPANY:

GENTLEMEN—I hereby tender my resignation as President and Director of your Company and request your immediate action thereon.

Very respectfully,

HENRY H. MAXWELL.

Franklin, Pa.,
November 2nd, 1908.

If a majority of the board wish to retain the president, they either vote that the resignation be not accepted or vote against a motion for its acceptance. In either case the president's resignation is of no effect and the incident is merely an endorsement of him and his position. If, however, those opposed to the president are a majority and accept the resignation, his official connection with the company is peremptorily terminated.

A more friendly resignation is given in the following form.

Form 140.—Resignation of Treasurer.

.....

NEW YORK, October 28th, 1908.

To the Board of Directors of the
OTIS MACHINE COMPANY,
43 Dey St., New York:

GENTLEMEN—I am offered the position of Treasurer of the Los Angeles Fruit Company of Los Angeles, California, and on account of the condition of my health am very desirous of accepting the same. I therefore hereby tender my resignation as Treasurer of the Otis Machine Company and ask your acceptance of same at the earliest possible date. I would also request the early appointment of a committee to audit my accounts and the due authorization of my successor to take over and receipt for the moneys and other property of the Company now in my charge.

Regretting the termination of my pleasant official relations with the Company and thanking you for the uniformly kind consideration accorded me by your body, I remain,

Respectfully,

JAMES H. MCDONALD.

.....

Resignations and other communications for the board of directors are frequently addressed to the secretary or even to the president of the company. The better practice is to address the communication to the board enclosing it in an envelope addressed to the secretary or the president of the company, as the case may be. It is then the duty of the officer receiving the communication to present it to the board. Such service on or delivery to the president or secretary is legally sufficient. (See §§ 113, 149.)

CHAPTER XXXVII.

FORMS OF CORPORATE AND OFFICIAL SIGNATURES.

The signature of a corporate official followed by his official designation is usually referred to as an "official" signature. (Forms 141, 142.) The name of a corporation duly affixed and evidenced by the signature of the affixing officer or officers is known as a "corporate" signature. (Form 143.)

Speaking generally, the corporate signature is affixed to all important instruments by which the corporation itself is to be directly and legally obligated, while the official signatures are employed by the corporate officials in matters pertaining particularly to their respective departments, in which the contract relations of the corporation do not enter in, or, if otherwise, the authority of the officer signing is sufficient to sustain his action.

Thus the president signs reports, letters, instruments, etc., with his official signature; the treasurer signs notices of dividends or assessments, financial statements and even corporate checks and reports in the same manner; while the secretary affixes his official signature to the minutes of meetings, to reports, notices, certificates, etc.

In regard to letter signatures, practice varies widely. In perhaps the majority of corporations the corporate signature is attached to every letter pertaining to the business of the corporation unless there is some special reason for a different signature. In many corporations, however,

this practice is exactly reversed, the official signature of the writer being always employed unless there is some special reason for the corporate signature. The former is the preferable plan.

Form 141.—Official Signature. Informal.

JOSEPH H. MCPHERSON,
President.

This is the simplest form of official signature. It should only be used when the letter or other instrument to which it is appended, shows plainly and unmistakably, by heading or subject matter, of what company the person signing is an official. If this is not the case, the official signature should be written in full as in the following form.

Form 142. Official Signature. Formal.

JOSEPH H. MACPHERSON,
President Holland Typewriter Co.

The following corporate signature is in its simplest form.

Form 143.—Corporate Signature.

(1) RAMSAY WATER COMPANY,
By.....
President.

(2) RAMSAY WATER COMPANY,
By HOWARD RAMSAY,
President.

The first of these forms shows a partial corporate signature—usually affixed by means of a rubber stamp—awaiting completion by the insertion of the president's signature as shown in the second form.

The word "By" as given in the preceding form is

sometimes omitted from the corporate signature. The word is, however, employed by a majority of the best conducted corporations of the country and its omission may, under some circumstances, involve the officer whose name is affixed in a personal liability. (See comment preceding Form 161.) The form as given is therefore regarded as distinctly preferable.

When the corporate signature is affixed to important instruments, usually, though not necessarily, two or more official signatures are employed. The seal is also usually affixed even when not legally necessary, (See § 153.)

Form 144.—Corporate Signature. Formal.

WESTERN CHEMICAL COMPANY,
By JOSEPH H. MCCLEARY,
President.
{CORPORATE SEAL.}
FREDERICK WELLMAN,
Secretary.

The corporate signature may be legally affixed by any corporate official or agent authorized thereto by the directors or by-laws. In all current business, however, where but one signing officer is desired, the president is usually designated, unless the transaction pertains specially to the department of some other official.

When the secretary's name is employed in a corporate signature, as in the foregoing form, no specific attestation of the seal is usual or necessary. If otherwise the seal should be formally attested as in the following form which gives the corporate signature usually employed.

Signatures affixed to formal instruments are customarily preceded by an explanatory statement termed a "testimonium clause."

Form 145.—Testimonium Clause. Corporate Signature. Seal Attested.

IN WITNESS WHEREOF, the said Powell Steel Company has caused its corporate name to be hereunto sub-

scribed by its President and its duly attested corporate seal to be hereunto affixed by its Secretary, all in the City of Hartford, State of Connecticut, on the 25th day of August, 1908.

{ CORPORATE SEAL. }

POWELL STEEL COMPANY,
By ALEXANDER H. McDOWELL,
President.

ATTEST SEAL:
FRANKLIN B. LORD,
Secretary.

.....

The following is a convenient form of testimonium clause when the instrument is to be signed by two or more corporations.

Form 146.—Testimonium Clause. Two Corporate Signatures.

.....

IN WITNESS WHEREOF, the said parties of the first and second parts have caused their respective corporate signatures and seals to be hereunto affixed by their duly authorized officers, in the City, County and State of New York, on the day and year first above written.

{ CORPORATE SEAL. }

ARLINGTON BRASS WORKS,
By HENRY BRIERLY,
President.

ATTEST SEAL:
JOHN H. SAVAGE,
Secretary.

{ CORPORATE SEAL. }

NEWARK CASTINGS COMPANY,
By HORACE D. POWERS,
President.

ATTEST SEAL:
HENRY M. SUNTHEIN,
Secretary.

.....

A more formal testmonium clause for a corporate and individual signature is as follows:

Form 147.—Testimonium Clause. Corporate and Individual Signatures.

.....

IN WITNESS WHEREOF, the Little Falls Carpet Company, said party of the first part, has caused its corporate seal to be affixed to this indenture and its corporate signature to be subscribed hereunto by its President and Secretary duly authorized thereunto, and the said

Harrison H. Spellman, party of the second part, has affixed his signature and seal hereunto, all being done in the City of Trenton, State of New Jersey, on the day and year first above written.

{ CORPORATE SEAL. }

LITTLE FALLS CARPET COMPANY,
By WILLIS H. SHELLEY,
President.
JAMES H. McCLELLAND,
Secretary.
HARRISON H. SPELLMAN. [L. S.]

.....

If a contract is signed by an agent, the corporate seal is not usually affixed. The testimonium clause in such case might be as follows:

Form 148.—Testimonium Clause. Signature Affixed by Agent.

.....

IN WITNESS WHEREOF, the said Milton Smelting Corporation, party of the first part, acting through its duly appointed agent, Mortimer H. Shepherd, authorized thereunto by resolution of its Board of Directors (certified copy of which resolution under the corporate seal is hereunto annexed), has caused its corporate signature to be hereunto affixed, and Samuel Jaros, party of the second part, has hereunto affixed his signature and seal, all on the day and year first above written.

MILTON SMELTING CORPORATION,
By MORTIMER H. SHEPHERD,
Agent.
SAMUEL JAROS. [L. S.]

.....

A copy of the resolution which authorizes the agent to execute the instrument on behalf of the corporation, duly certified under the corporate seal, should be attached to the instrument, thus making the evidence of its proper execution complete. (See also testimonium clauses of Forms 163, 164, 179-189.)

CHAPTER XXXVIII.

FORMS OF CHECKS, RECEIPTS AND NOTES.

(a) Corporate Checks.

The form of signature to a corporate check is not material. Its purpose is merely to identify and authenticate the instrument, and any signature duly prescribed by the by-laws or by resolution of the directors and recognized by the company's bank is sufficient. Consequently —while the corporate signature is usually to be preferred —there is in practice much variation as shown in the forms which follow.

The corporate seal is seldom if ever used on corporate checks, though its use does not affect the check in any way. When the corporate funds are material in amount, the name of two officials are usually required upon the check.

The forms of check which follow are in common use.

Form 149.—Check. Corporate Signature.

Standard Radiator Company.

No. 1754 New York, August 1, 1908.

SEABOARD NATIONAL BANK
of the City of New York.

Pay to the order of John H. Wilkins.....$425.75
Four Hundred and Twenty-Five.....75/100 Dollars.

Standard Radiator Company,
Samuel S. Steigel,
President.
Stewart H. Wilson,
Treasurer.

Frequently the number is placed in the upper right-hand corner of a check, the date line coming in above or below. Such an arrangement, with the other details as shown in the form given, is highly approved by bank officials, as it brings the essential features of the check—number, date, amount, payee and signature—all well over to the right-hand side of the check in the most convenient position for rapid reference.

If the by-laws or a directors' resolution require that the corporate name be affixed by the treasurer and the check be countersigned by the president, as is frequently the case, the following form is approved.

Form 150.—Check. Countersigned.

Merrivale Coal Company,
No. 1 Broadway, New York.

No. 244. New York, September 8, 1908.

STANDARD NATIONAL BANK
of the City of New York.

Pay to the order of Howard P. Huntington.....$475.00
Four Hundred and Seventy-Five no/100.....Dollars

Countersigned:
James J. McLane,
President.

Merrivale Coal Company,
By Horace P. Wisner,
Treasurer.

Where the official signatures of the treasurer and the president are affixed, the form is usually as follows:

Form 151.—Check. Official Signatures.

King Furniture Co.
175 W. 23rd St., N. Y.

No. 1582. New York, October 1, 1908.

THE PEOPLE'S NATIONAL BANK
of New York.

Pay to the order of Jesse Claire.....$125.45
One Hundred and Twenty-Five 45/100.....Dollars

Wallace McComb,
President.

Perry H. Ducroix,
Treasurer.

Form 152.—Check. Official Signatures. Purpose Stated.

Shoshone Mfg. Co.
325 Elm St., New York.

No. 745. New York, October 1, 1908.

BANK OF MANHATTAN
of New York City.

Pay to the order of James & Oliver.....$125.75
One Hundred and Twenty-Five.....75/100 Dollars.

In full for
September printing.

Rudolf Hessler,
President.
Jasper H. McMeis,
Treasurer.

There is no objection, legal or practical, to the entry on a check of the purpose for which it is issued, if so placed as not to obscure or interfere with its essential details. The advantage in the use of such a check is apparent. Duly endorsed, as it must be before payment is made, the check itself affords the best possible evidence of the settlement effected thereby, and saves the expense and trouble of a more formal receipt.

Checks of this nature range from the very simple form of receipt check given, up to elaborate voucher checks of blanket sheet dimensions, containing a detailed statement of the entire account in payment of which the check is drawn.

A form of check much in favor because of the prominence given to the name of the issuing corporation, is as follows:

Form 153.—Check. Draft Form.

ALLIS-WILKINS COMPANY,
1675 Broadway, New York.

No. 1728. August 15, 1908.
Pay to the order of Jesse H. Sinclair.....$35.25
Thirty-Five.....25/100 Dollars.

Allis-Wilkins Company,
By Francis H. Whitman,
Treasurer.

To the
Seaboard National Bank,
New York.

In the smaller corporations dividends are usually paid by means of the ordinary corporate check, the words "Dividend Check" being stamped or written across its face. (See § 168.) In the larger corporations special checks are employed for the purpose, as in the following form:

Form 154.—Dividend Check.

Preferred Stock Dividend,
No. 42.

AMERICAN WOOL EXPORT COMPANY,
New York, August 31, 1908. No. 1482.

AMERICAN NATIONAL BANK
of New York.
Pay to the order of

Henry H. McCall.....$125.00
One Hundred and Twenty-Five.....00/100 Dollars.
Countersigned:
Stock Transfer Department.
John Frenckel, Transfer Agent.

Frank S. Jordan,
Treasurer.

No receipt is usually required when this form of dividend check is employed, the duly endorsed check in itself affording the best possible evidence of payment of the dividend.

The ordinary endorsement of a corporate check is given in the following form.

Form 155.—Endorsement of Corporate Check.

Vogel Shoe Company,
Ralph A. Smith,
Treasurer.

This endorsement is usually affixed by the treasurer or cashier, though the president is frequently authorized thereto.

The following form of endorsement is usually affixed in its entirety—corporate name, official signature and all—with a rubber stamp. Such an endorsement is approved by the banks and, on account of the rapidity and convenience with which it may be affixed, is generally employed.

Form 156.—Endorsement of Check for Deposit.

Pay to the Order of the
Chase National Bank,
Howell Hardware Company,
John Blake, Treasurer.

The following is a common form of corporate draft.

Form 157.—Corporate Draft.

No. 745. New York, October 1, 1908.

Three days after sight pay to the order of
Seaboard National Bank of New York.....$1,245.25
Twelve Hundred and Forty-Five 25/100.....Dollars
payment of account as per our statement of September 1st, 1908.
Value received. Charge same to account of
Car Equipment Company,
By Howard James,
Treasurer.

To North Wheeling Car Co.,
Wheeling, West Virginia.

(b) Corporate Receipts.

A common form of corporate receipt is as follows:

Form 158.—Corporate Receipt.

Metropolitan Realty Co.,
325 Cedar St., N. Y.

$250.00 New York, July 15, 1908.

Received from Edward M. Blair Two Hundred and Fifty Dollars, rental of Store at No. 65 Vesey St. for September.

Metropolitan Realty Company,
By Samuel F. Watkins,
Treasurer.

It would seem preferable that all receipts for money received by a corporation should be given in the corporate name. In practice, however, corporate receipts are commonly signed by the treasurer. In such case the name of the corporation should appear prominently.

Form 159.—Corporate Receipt. Official Signature.

$725.25 September 15, 1908.

WELLMAN SUPPLY CORPORATION,
265 Chambers St., New York.

Received from the Jackson Hardware Company Seven Hundred and Twenty-five 25/100 Dollars in full of account.

H. J. Ashton,
Treasurer.

The larger corporations, when dividends are to be paid, employ dividend checks (See Form 154), which when properly endorsed and deposited, are usually regarded as all sufficient receipts. If, however, formal receipts are desired, the following form will serve.

Form 160.—Dividend Receipt.

Howard Foundation Company.

$25.00 Boston, Mass., October 1, 1908.

Received of the Howard Foundation Company Twenty-Five Dollars, payment in full of the regular quarterly dividend of One and One-half Per Cent. on the stock of said corporation standing in my name.

Henry J. Pollock.

This receipt is sent out with the dividend check to be signed and returned by the recipient. When payment of dividends is made at the office of the company or at the office of some specified trust company or bank, the parties receiving payment usually sign the dividend register (See Form 195) and no other receipt is necessary.

Receipts for instalment payments on stock are given in Forms 8 to 11.

(c) CORPORATE NOTES.

A corporate note does not require to be sealed. It may be signed by any officer or officers properly authorized thereto. Such authority is usually conferred by by-law provisions or by resolution of the board of directors, but otherwise may be given by custom. For large amounts or special transactions outside the usual routine, the officer's authorization should always be specific and usually by resolution of the board of directors.

The signature of a corporate note should always be the corporate signature. Any other signature may not only fail to bind the corporation, but has been held in some states to involve the official signing the note in a personal liability as its maker or endorser.

Form 161.—Corporate Note. By President.

$500.00 NEW YORK, October 1, 1908.

Ninety days after date the Hillman Dredging Company promises to pay to the order of Howard P. Hunt the sum of Five Hundred Dollars.

Valued Received.

HILLMAN DREDGING COMPANY.
By Nathaniel Potter,
President.

Payable at
Seaboard National Bank,
New York.

Form 162.—Corporate Note. By Treasurer.

$2,500.00 Boston, Mass., September 1, 1908.

Four months after date the Hanover Securities Company promises to pay to the order of James C. Bennett the sum of Twenty-Five Hundred Dollars, with interest from date until paid, at the rate of Six Per Cent. per annum, at the Sedgwick National Bank of Boston.

Value Received.

HANOVER SECURITIES COMPANY,
By William Curtiss,
Treasurer.

No. 725.
Due January 1, 1909.

The preceding notes are in the simplest form. The corporate signature is affixed by one officer or by two as may be customary or required by by-law provision or directed by the board.

Collateral notes vary greatly in formality and severity of terms. (See § 42.) The following form is simple and is used by some of the larger New York banks.

Form 163.—Collateral Note. On Demand.

COLLATERAL NOTE.

$4,000.00 New York, N. Y., October 3, 1908.

ON DEMAND the Hanover Power Company promises to pay to the Seaboard National Bank of the City of New York, or order, at its Banking House, No. 18 Broadway, New York, N. Y., Four Thousand Dollars for value received, with interest at the rate of Six (6%) Per Cent. per annum from the date hereof, said corporation having deposited with said Bank as collateral security for payment of this or any other liability or liabilities of the undersigned to said Bank, due or to be due or which may be hereafter contracted or exist, the following property or securities, viz.: Sixty-five (65) Shares of the Preferred Stock of the United States Steel Corporation of the par value of One Hundred ($100) Dollars each, the certificate for said stock standing in the name of John H. Howard, Treasurer of the said Hanover Power Company, and being endorsed by him in blank on the back of said certificate.

The market value thereof is to-day $7,085.00, and full power and authority is hereby given to said Bank to sell, assign and deliver the whole or any part thereof, or any substitutes therefor, or any additions thereto, at any Brokers' Board, or at public or private sale, at the option of said Bank or its assigns on the non-performance of this promise or the non-payment of any of the liabilities above mentioned, or at any time or times thereafter, without advertisement or notice, which are hereby expressly waived; and upon such sale the holder hereof may purchase the whole or any part of such securities discharged from any right of redemption, and after deducting all legal or other costs and expenses for collection, sale and delivery, shall apply the residue of the proceeds of such sale or sales so to be made to pay any, either or all of said liabilities to said Bank or its assigns, as said Bank or its assigns shall deem proper, returning the overplus, if any, to the undersigned. And the undersigned gives to said Bank a lien to secure this note and all said other liabilities now existing or hereafter arising, and whether at any time due or not, upon all property and securities of the undersigned now or hereafter deposited with or

left in the possession of said Bank, either as collateral for any other obligation or otherwise, and also upon any balance at any time of the deposit account of the undersigned with said Bank. Other collaterals may be substituted or added from time to time with the bank's consent, all representations, conditions and agreements as to original collaterals applying to those so substituted or added.

IN WITNESS WHEREOF, the said corporation has hereunto affixed its corporate signature and seal, acting through its President and Treasurer duly authorized thereunto.

{ CORPORATE SEAL }

HANOVER POWER COMPANY,
By John H. Henderson,
President.
Harry F. Sinclair,
Treasurer.

Another form of collateral note is as follows:

Form 164.—Corporate Note. Collateral Security.

COLLATERAL NOTE.

$10,000.00 New York, October 1, 1908.

Ninety days after date the Berwick Mercantile Company promises to pay to the order of the Guardian Trust Company of New York City, at No. 170 Broadway, New York City, the sum of Ten Thousand Dollars, with interest from date until paid at the rate of Five (5%) Per Cent. per annum, and the said Berwick Mercantile Company doth herewith deposit with the Guardian Trust Company as collateral security for the due payment of the foregoing promissory note, Two Hundred (200) Shares of its stock in one Certificate No. 325, said Certificate standing in the name of Mark Baldwin, Treasurer of the said Berwick Mercantile Company, and endorsed by him in blank.

And in the event that this note or the interest thereon shall not be paid when due, the said Berwick Mercantile Company hereby appoints and constitutes the said Guardian Trust Company its attorney in fact and irrevocably, with power of substitution, to sell at any time after this said note or any interest thereon is due and unpaid, with or without notice, and either at public or private sale, the whole or any part of said securities, the proceeds thereof to be applied to the payment of the said promissory note, any interest due thereon, and any commissions properly payable on the sales of said securities so sold, and any surplus remaining thereafter, either of cash or of the said securities to belong to and be subject to the order of the said Berwick Mercantile Company; and should said securities not bring the full amount of this present note, together with any interest accrued thereon, said Berwick Mercantile Company undertakes and agrees to pay the amount still due to the holder hereof on demand.

Should any such sale be made, the holder hereof shall directly or in the name of any other person, have the right to purchase the security aforesaid. In case the market value of the same shall decrease, the said Berwick Mercantile Company hereby promises and agrees to proportionately reduce the amount of its indebtedness hereunder, or otherwise increase the security in proportion to said decrease of value.

IN WITNESS WHEREOF, the said Berwick Mercantile Company has caused its name to be subscribed hereunto by its President, and its duly attested seal to be affixed hereto by its Secretary, on the day and year first above written.

{ CORPORATE SEAL }

BERWICK MERCANTILE COMPANY,
By Henry S. Corbin,
President.

ATTEST SEAL:
AMOS C. HALLOCK,
Secretary.

When the corporate officials are not expressly authorized to execute notes by due resolution deposited with the bank in whose favor the notes are drawn, a certified resolution evidencing their authority is usually required. (For resolution see Forms 84-98; for certification see Form 169.)

CHAPTER XXXIX.

FORMS FOR CERTIFICATIONS.

The certifications so frequently required in corporate procedure are never made in the corporate name. Certificates and affidavits to corporate instruments are made over their own names by the officers directly interested or concerned. Acknowledgments are made for and on behalf of the corporation—but not in its name—by such corporate officials or agents as may be prescribed by statute or be authorized thereto by the by-laws or resolutions of the board.

Form 165.—Certificate to Service of Notice.

I, the undersigned, Secretary of the Atlantic Machine Works, do hereby certify that in accordance with the by-law requirements of said Company, a copy of the foregoing notice, properly enclosed and directed, and with postage prepaid, was by me on the 3rd day of October, 1908, mailed to each stockholder of record of said Company at his address as it appeared on the books of the Company.

HENRY H. LINDEN.

NEW YORK CITY,
October 15th, 1908.

This certificate usually appears on the same sheet with and below a copy of the notice, though sometimes written separately and attached to a copy of the notice. (See §§ 87, 97.) In this latter case the wording of the certificate must be changed to correspond with the facts.

An affidavit, as in the case of the certification, may appear on the same sheet as the copy of the notice, or be attached thereto.

Form 166.—Affidavit to Service of Notice.

STATE OF NEW YORK, } ss.:
COUNTY OF NEW YORK, }

On this 15th day of October, 1908, before me personally appeared Henry H. Linden, Secretary of the Atlantic Machine Works, who, being duly sworn, did depose and say that on the 3rd day of October, 1908, a copy of the attached notice of meeting, properly enclosed and directed and with postage prepaid, was by him mailed to each stockholder of record of said corporation at his address as shown by the books of the Company.

HENRY H. LINDEN.

Sworn to and subscribed before me
the day and year aforesaid.

{ NOTARIAL SEAL. }

JOHN H. ANDERSON,
Notary Public for the State
and County of New York.

The best evidence of notice by publication is furnished by complete copies of the papers in which the notice appeared. When these are supplied, no certification as to publication of the notice is usually required. If, however, the notice is clipped from the paper and so preserved, an affidavit is sometimes considered desirable. The larger city papers furnish such affidavits on request for notices published in their columns. If the affidavit is made by the secretary it may be in the following form.

Form 167.—Affidavit to Publication of Notice.

AFFIDAVIT.

STATE OF NEW YORK, } ss.:
COUNTY OF NEW YORK, }

On this 15th day of October, 1908, before me personally appeared Henry H. Linden, Secretary of the Atlantic Machine Works, who being duly sworn, did depose and say that the annexed notice was published in the "New York Times" on the 3rd and 10th days of October, 1908.

HENRY H. LINDEN.

Sworn to and subscribed before me
the day and year aforesaid.

{ NOTARIAL SEAL. }

JOHN H. ANDERSON,
Notary Public for the State
and County of New York.

In the following form of certified resolution the reso-

lution appears on the upper part of the sheet followed by the certification, the general arrangement being the same as in Form 172.

Form 168.—Certified Resolution Designating Bank.

.....

(For Resolution see Form 84.)

I, Sherman H. Rogers, Secretary of the Allis Drug Company, do hereby certify that the foregoing is a full and true transcript of a resolution duly adopted at a regular meeting of the Board of Directors of the said Company held in the City of New York on the 10th day of November, 1908, as it appears on the minutes of said meeting, and I do further certify that Charles Allis is the duly elected President of said Company, and Jasper T. Huntington is its duly elected Treasurer.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and the corporate seal of said Company, this 25th day of November, 1908.

{ CORPORATE SEAL. }

SHERMAN H. ROGERS,
Secretary.

.....

The following certification is employed in connection with the resolution given in Form 84a:

Form 168a.—Certification of Resolution Designating Bank.

.....

I, John H. Farwell, Assistant Secretary of the Standard Milling Company, do hereby certify that the foregoing resolution was duly adopted at a regular meeting of the Board of Directors of said Company held on Tuesday, November 10, 1908, in the office of the Company, 225 Fifth Avenue, New York, all as shown by the minutes of said meeting, and that the transcript of Section 3, Article VII of the By-laws of said Company appearing in the preamble of said resolution is a true and accurate transcript thereof from the duly adopted By-laws of the Company, and I do further certify that Henry F. Farrand is the duly elected Treasurer of said Company and Howard C. Malcolm is its duly elected President.

Witness my official signature and the corporate seal of said Company, this 18th day of November, 1908.

JOHN H. FARWELL,
Assistant Secretary.

{ CORPORATE SEAL. }

.....

If the bank requires certified signatures of the signing officials, these signatures might be written on the same sheet between the resolution and certification, and the following phrase be added to the certification: "and that the signatures above written are respectively the signatures of the said Henry F. Farrand and Howard C. Malcolm."

A different form of certification employed in connection with the resolution of Form 85 is as follows:

Form 169.—Certification of Resolution.

.....

The undersigned, Secretary of the American Textile Company, does hereby certify that the foregoing resolution was duly adopted on the 10th day of December, 1908, at a meeting of the Board of Directors of said Company regularly called and duly constituted and at which a quorum was present.

Witness my hand and the seal of said corporation this 12th day of December, 1908.

ALFRED DILWORTH,
Secretary.

{ CORPORATE SEAL. }

.....

Form 170.—Certificate of Election of Treasurer.

.....

I, Horace B. Elkins, Secretary of the Ellwood Creamery Company, hereby certify that at a regular and duly constituted meeting of the Board of Directors of said Company held in the City of Albany on the 1st day of December, 1908, Henry Howells was elected Treasurer of said Company to fill the vacancy in said office caused by the death of J. J. McAllen, and that the said Henry Howells is now the duly qualified and authorized Treasurer of the said Ellwood Creamery Company.

Witness my hand and the seal of the Company this 10th day of December, 1908.

HORACE B. ELKINS,
Secretary.

{ CORPORATE SEAL. }

.....

The following certificate of the election of corporate officials may be used when greater formality is desired.

Form 171.—Certificate of Election of Officers.

.....

I, Emory Hardin, Secretary of the Dyett-King Leather Company, do hereby certify that the directors of said Company being duly assembled in lawful meeting in the office of the Company, No. 75 Dey St., New York City, on the 9th day of November, 1908, and a quorum being present, did then and there elect Frederick Myers President and Walter C. Jackson Treasurer of said corporation, to serve for the ensuing year and until the due election and qualification of their successors, and that Frederick Myers and Walter C. Jackson are now duly and fully qualified and empowered to act for said corporation in their respective official capacities.

In Testimony Whereof, I have hereunto affixed my official signature and the corporate seal of said Company this 15th day of November, 1908.

EMORY HARDIN,
Secretary.

{ CORPORATE SEAL. }

The following are convenient forms for certifications of transcripts.

Form 172.—Certification. Transcript from By-laws.

CONSOLIDATED CRACKER COMPANY.

TRANSCRIPT FROM BY-LAWS.

"ARTICLE IV.—OFFICERS.

"Sec. 2. *The President.*

"The President when present shall preside at all meetings of the stockholders and of the Board of Directors; shall sign all certificates of stock; shall sign or countersign as may be necessary all such bills, notes, checks, drafts and other instruments as may pertain to the ordinary course of the Company's business, and shall sign when duly authoried thereto all contracts, orders, deeds, licenses and other instruments of a special nature.

"He may also in the absence or disability of the Treasurer, endorse checks, drafts and other negotiable instruments for deposit or collection, and shall with the Secretary sign the minutes of all meetings over which he presides."

I, James T. Howard, Secretary of the Consolidated Cracker Company, do hereby certify that the above is a true and correct copy of Section 2, Article IV of the duly adopted by-laws of this Company, and in testimony thereof I have hereunto affixed my official signature and the seal of the Company in the City of Brooklyn, on this 21st day of November, 1908.

JAMES T. HOWARD,
Secretary.

{ CORPORATE SEAL. }

Form 173.—Certification. Transcript from Minutes.

TRANSCRIPT FROM MINUTES.

WESTON MANUFACTURING CORPORATION.

Regular Meeting of Directors Held September 15, 1908.

(*Transcript from minutes appears here.*)

I, the undersigned, Secretary of the Weston Manufacturing Corporation, do hereby certify that the above and foregoing is a true and accurate transcript from the minutes of a regular meeting of the Board of Directors of said Company held in the office of the Company on the 15th day of September, 1908, and recorded on pages 85 to 87 of the Minute Book of said Company.

Witness my hand and the seal of the Company this 14th day of November, 1908.

HORACE POTTER,
Secretary.

{ CORPORATE SEAL. }

The president occasionally joins with the secretary in the certification of any special important transcript. In such case the certificate is changed as follows:

Form 174.—Certification of Minutes. President and Secretary.

We, the undersigned, President and Secretary respectively of the Weston Manufacturing Corporation, do hereby certify that the above and foregoing is a true and accurate transcript from the minutes of a regular meeting of the Board of Directors of said Company held in the office of the Company on the 15th day of September, 1908, and recorded on pages 85 to 87 of the Minute Book of said Company.

IN WITNESS WHEREOF, we have hereunto affixed our official signatures and the seal of the Company in the City of New York on this 14th day of November, 1908.

{ CORPORATE SEAL. }

HENRY J. RANDALL,
President.

HORACE POTTER,
Secretary.

Affidavits take the place of the secretary's certificate when corporate records or transcripts therefrom are required for use in legal proceedings.

Form 175.—Secretary's Affidavit to Minutes.

COUNTY OF NEW YORK, } *ss.:*
STATE OF NEW YORK, }

On this 14th day of November, 1908, before me personally appeared Horace Potter, who being duly sworn, did depose and say that he is the Secretary of the Weston Manufacturing Corporation; that he was present at the regular meeting of the Directors of that Company held on the 15th day of September, 1908; that he recorded the proceedings of said meeting in the Minute Book of the corporation, and that the above and foregoing is a true and correct transcript from the minutes so recorded.

HORACE POTTER.

Sworn to and subscribed before me
on the day and year above stated.

(*Notarial signature and seal.*)

Notarial exemplifications of certified transcripts from the corporate records are sometimes required as illustrated by the following form.

Form 176.—Notarial Exemplification of Minutes.

STATE OF NEW YORK, }
County of New York, } *ss.:*

Personally appeared before me this 20th day of November, 1908, Horace Potter, to me well known, and acknowledged that he signed the foregoing certification of a transcript from the minutes of the Weston Manufacturing Corporation, and affixed the seal of said Company thereto as Secretary of the said Company for the purposes therein set forth, and I have personally examined the minutes of said Company under date of September 15th, 1908, and certify that the foregoing transcript is correctly transcribed therefrom.

MORRIS MANNING,
Notary Public for the State
and County of New York.
No. 765.

{ NOTARIAL SEAL. }

Term expires December 1, 1908.

The treasurer's certifications to matters relating to the corporate finances are usually in the form of affidavits.

Form 177.—Treasurer's Affidavit. Corporate Statement.

STATE OF NEW YORK, }
County of New York, } *ss.:*

On this 19th day of October, 1908, personally appeared before me, a Notary Public in and for the County of New York, Walter L. Hood, Treasurer of the Hood Scale Company, who, being duly sworn, did depose and say that he has full charge and control of the books and accounts of the said Company; that the above and foregoing statement is taken from said books and accounts; that it is a true and accurate transcript therefrom, and that to the best of his knowledge and belief it is a just and correct presentation of the financial condition of said Company on this date.

WALTER L. HOOD.

Sworn to before me the
day and year aforesaid.

JAMES H. STEELE,
Notary Public for
New York County.
No. 994.

{ NOTARIAL SEAL. }

Term expires Feb. 15, 1909.

This affidavit follows the statement on the same sheet, or on the last sheet if the statement extends over several pages. In the affidavit which follows the statement of account is included with the form.

Form 177a.—Treasurer's Affidavit. Individual Statement.

NEW YORK, December 1, 1908.

HOWARD J. ELKINS, Dr.
To FIELDING DESK COMPANY.

1908			
Nov. 14	To 1 Standard Roll Top Mahogany Desk, 54"...	$75.00	
	1 Bookkeeper's Desk, 48".....	35.00	$110.00

STATE OF NEW YORK, }
County of New York, } *ss.:*

On this 1st day of December, 1908, appeared before me, a Notary Public in and for the County of New York, John J. Fielding, Treasurer of the Fielding Desk Company, who, being duly sworn, did depose and say that he has full charge and control of the books of account of said Company; that the above statement of indebtedness of Howard J. Elkins to said Fielding Desk Company is taken from said books of account, and that it is a true and accurate statement of said indebtedness of said Howard J. Elkins on this date.

JOHN J. FIELDING.

Subscribed and sworn to before me
the day and year aforesaid.

(Notarial signature and seal.)

When corporate acknowledgments are taken the notary should not be an officer or stockholder of the corporation. The form of acknowledgment is usually regulated by statute and therefore varies in almost every state of the Union. The following form of corporate acknowledgment is that prescribed by the statutes of New York.

Form 178.—Notarial Acknowledgment. New York.

STATE OF NEW YORK, }
County of New York, } *ss.:*

On this 16th day of November in the year 1908, before me personally came John J. Kerry, to me known, who, being by me duly sworn, did depose and say that he resided in the City of New York; that he is the President of the Kerry Machine Works, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

JOHN J. KERRY.

Sworn to before me the
day and year aforesaid.

(Notarial signature and seal.)

CHAPTER XL.

POWERS OF ATTORNEY, CONTRACTS AND ASSIGNMENTS.

(a) Powers of Attorney.

The execution of a power of attorney varies according to the powers conveyed and the conditions under which it is given. The instrument which follows does not require acknowledgment when the parties are known to the corporate officials. If otherwise acknowledgment is usually required. (See Forms 130a, 130b.)

Form 179.—Power of Attorney. To Receive Dividends.

Power of Attorney.

I, the undersigned, do hereby constitute and appoint George H. Williams of New York City, my true and lawful attorney, for me and in my place and stead, to receive any and all dividends that may be declared upon Fifty Shares of Preferred Stock of the Howard Bank Note Company now standing in my name on the books of said Company, and to receipt for the same, and to do all other things that may be necessary to carry into effect the intent of this power of attorney; and I hereby ratify and confirm all that my said attorney may properly do by virtue of the authority herein conferred.

In Witness Whereof, I have hereunto affixed my signature and seal this 7th day of December, 1908.

George H. Lane. [L. S.]

Witnessed by
Howard Lansing.

A corporate power of attorney differs from the ordinary form only in those details directly incident to its corporate origin.

Form 180.—Power of Attorney. To Collect Money.

Power of Attorney.

Know All Men by These Presents:

That the Tucson Cattle Company, a corporation duly organized under the laws of Arizona, does hereby make, constitute and appoint Howard H. McComb of the State of New York, its true and lawful attorney, for it and in its name, place and stead, to collect and receive from the New York Drovers' Association of New York City the sum of Three Thousand ($3,000) Dollars with interest thereon at the legal rate from the 1st day of January, 1908, said amount being due and payable to the Tuscon Cattle Company for and on account of cattle shipped the said New York Drovers' Association during the month of December, 1907, and the said Howard H. McComb is hereby fully authorized and empowered for and on account of the said Tuscon Cattle Company and in its name, to collect, receive and receipt for the said Three Thousand ($3,000) Dollars, and the interest thereon as aforesaid, in whole or in part, but without prejudice to any portion thereof unpaid, and to incur and pay on behalf of the said Tucson Cattle Company all reasonable expenses incident to the collection of said amount, including all proper cost of any suit or other legal proceedings necessary thereto, and generally to do all such other things in connection therewith as may be necessary and proper in the premises.

In Witness Whereof, the said Tucson Cattle Company has caused its corporate name to be signed hereunto by its President and its corporate seal to be affixed and attested by its Secretary, all being done in the City of Tucson, Arizona, on this the 25th day of November, 1908.

{ CORPORATE SEAL }

Tucson Cattle Company,
By George M. Price,
President.

ATTEST SEAL:
Wilson M. Burney,
Secretary.

The foregoing power of attorney would usually be acknowledged in order to give it greater weight and more ready recognition. For the same reasons the power of attorney which follows should either be accompanied by a certified copy of the resolution by which it was authorized, or otherwise be acknowledged.

Form 181.—Power of Attorney. To Make Delivery of Deed.

Power of Attorney.

Know All Men by These Presents:

That the Albany Flouring Mills, a corporation duly organized under the laws of the State of New York, and having its principal office and place of business in Albany, New York, has made, constituted and ap-

pointed, and by these presents does make, constitute and appoint, George H. McCall of Philadelphia, Pennsylvania, its true and lawful attorney, for it and its name and stead, to deliver to the Adams Foundation Company of Philadelphia, Pennsylvania, a certain deed duly executed by the said Albany Flouring Mills and transferring to the said Adams Foundation Company the property therein described at Nos. 1534, 1536 and 1538 West Side Avenue, Philadelphia, and to receive payment for the property transferred by said deed, and the said George H. McCall is hereby fully authorized and empowered for and on behalf of this Company to make good and valid delivery of the said deed and to receive from the said Adams Foundation Company the sum of Nineteen Thousand, Two Hundred and Fifty ($19,250) Dollars in cash, payment for the property transferred by said deed, and to receipt for said payment, and to do all such other things as may be necessary and proper in the premises.

IN WITNESS WHEREOF, the said Albany Flouring Mills has caused its corporate seal to be affixed hereunto by its Secretary and its name to be subscribed hereto by its President, all being done in the City of Albany, and State of New York, on this first day of December, 1908.

{ CORPORATE SEAL }

ALBANY FLOURING MILLS,
By JESSE H. BLANCHARD,
President.

ATTEST SEAL:
JULIAN HURNDON,
Secretary.

.....

The power of attorney which follows authorizes the sale of land and the execution and delivery of the deeds, and therefore requires the same formal execution as a deed. Without this it is ineffective. The form of execution must comply with the law of the state in which the land to be conveyed is located.

Form 182.—Power of Attorney. To Manage, Sell and Deed Land.

.....

POWER OF ATTORNEY.

KNOW ALL MEN BY THESE PRESENTS:

That the Berwell Investment Company, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and having its office and principal place of business at No. 30 Broad Street, in the City of New York, has made, constituted and appointed, and by these presents does make, constitute and appoint, Horace M. Maxwell of Houston, Texas, its true and lawful attorney, for it and in its name, place and stead, to bond, grant, bargain, sell, contract, lease, exchange, give options on, sell timber from, sell or lease oil, coal or other mineral rights in or on, or handle or dispose of in such other way as may by him be deemed advantageous and advisable, and for such consideration and on such terms as he may approve, and in whole or in part, that certain tract or parcel of land, owned by said Berwell Investment Company, in Brazos County, Texas, consisting of the east half of the league of land known

as the J. J. Oliver League, and containing Two Thousand, Two Hundred and Fourteen (2,214) Acres, more or less, said land being part of the Headright granted to J. J. Oliver by the Mexican Government and surveyed by the County Surveyor in 1838, and conveyed to the Berwell Investment Company by deed from the said J. J. Oliver, dated July 1st, 1856, and recorded in the office of the County Clerk of Brazos County, D. B. 15, page 225; and the said Berwell Investment Company grants to its said attorney full power and authority to collect and receive for said Company all rents, royalties and other considerations or payments derived from the said property in any way; and for the said Berwell Investment Company and in its name and stead, either alone or jointly with others, as may be requisite and necessary, to make, execute, acknowledge and deliver good and sufficient deeds, conveyances, option contracts or leases for the said property, or for any parts thereof, or for any rights therein or thereon, giving and granting its said attorney full power and authority to do and perform any and every act and thing whatsoever requisite and necessary to be done in the premises, the said Company hereby ratifying and confirming all that its said attorney shall lawfully do or cause to be done by virtue of this present indenture.

IN WITNESS WHEREOF, the said Berwell Investment Company has caused its corporate name to be signed by its President and its corporate seal to be affixed by its Secretary, all being done in the City of New York on this the 18th day of August, 1908.

{ CORPORATE SEAL }

BERWELL INVESTMENT COMPANY,
By JAMES WARREN,
President.

ATTEST SEAL:
WILLIS BAKER,
Secretary.

.....

This instrument is sweeping, giving the agent practically every power over the lands affected that the company has itself. The acknowledgment must in this case follow the Texas form.

When a corporate power of attorney is given for some special act, it expires automatically as soon as that act is performed. When, however, it is desired to terminate the powers prior thereto, or where the power is a continuing one, a formal revocation is necessary. Notice of this revocation should be sent to the parties directly interested, and, in case of a general power of attorney, should also be published.

Form 183.—Revocation of Power of Attorney.

.....

KNOW ALL MEN BY THESE PRESENTS:

That the Berwell Investment Company, a corporation duly organized and existing under and by virtue of the laws of the State of New York,

and having its office and principal place of business at No. 30 Broad Street in the City of New York, has for good cause and consideration revoked, recalled, annulled and made void, and by these presents does revoke, recall, annul and make void a certain power of attorney given under date of August 18th, 1908, under the corporate signature and seal, to Horace M. Maxwell of Houston, Texas, and does hereby withdraw, deny and cancel any and all powers and authorities whatsoever therein expressed and conveyed.

IN WITNESS WHEREOF, the said Berwell Investment Company has caused its corporate signature and seal to be hereunto affixed by its President and Secretary in the City of New York on this 19th day of November, 1908.

{ CORPORATE SEAL. }

BERWELL INVESTMENT COMPANY,
By JAMES WARREN,
President.
WILLIS BAKER,
Secretary.

.....

(b) CORPORATE CONTRACTS.

Corporate contracts differ in nowise from contracts between individuals, save in the verbiage necessary to adapt them to the corporate form. The forms which follow are included merely to illustrate this adaptation.

Form 184.—Corporate Contract.

.....

CONTRACT.

AN AGREEMENT, made and entered into this 25th day of November, A. D. 1908, by and between the Atlas Lithographing Company, a corporation duly organized under the laws of the State of Maine and having its usual place of business in Boston, Massachusetts, party of the first part, and the Selby Lithographing Company, a corporation organized under the laws of the State of New York, and having its principal office and place of business at No. 20 Broad Street in the City of New York, party of the second part.

For and in consideration of the sum of One Dollar and of other valuable considerations passing between the parties hereto, the receipt whereof is hereby respectively acknowledged, it is agreed as follows:

(1) That the said party of the first part shall employ one John H. Bernard of Boston, Massachusetts, for account of both the parties hereunto, to work upon and perfect as far as may be, a certain improvement in lithography known as the "Silver Plate Process," said process being now the joint property of the said parties to this present agreement.

(2) That said party of the first part shall pay the said John H. Bernard a monthly salary not exceeding Three Hundred ($300) Dollars and shall also furnish such materials, supplies and assistance as the said John H. Bernard may reasonably require in the progress of his work.

(3) That at the end of each quarter said party of the first part shall render a statement of the expenses incurred by reason of the employment of the said John H. Bernard for the perfection of the said Silver Plate Process, and said party of the second part shall within ten days of the receipt of said statement remit one-half thereof to the said party of the first part.

(4) That all improvements in said Silver Plate Process or in connection therewith that may be made or discovered by the said John H. Bernard, shall be the joint and equal property of the two parties to this present agreement, and patents therefor shall be taken out in the names of the said parties of this present agreement and at their joint expense.

(5) That said employment of said John H. Bernard shall continue for one year from date, unless sooner terminated by mutual agreement or by circumstances beyond the control of the parties hereto.

(*Testimonium and signatures as in Form* 146).

.....

This agreement might or might not be acknowledged at the discretion of the parties. The contract as executed is legally sufficient. The only advantage to be gained by an acknowledgment is the greater ease of proving the authenticity and due execution of the instrument in case of litigation.

Form 185.—Corporate Bill of Sale.

.....

BILL OF SALE.

KNOW ALL MEN BY THESE PRESENTS:

That the Standard Laundry Machine Company, a corporation duly organized under the laws of the State of New York, with its principal office and place of business at No. 50 Dey St., in the City of New York, in consideration of the sum of One Thousand Dollars to it paid by the Clipper Laundry Company of No. 71 East 21st St., New York City, the receipt whereof is hereby acknowledged, does hereby sell, transfer and assign to the said Clipper Laundry Company the following goods and chattels, viz.:

All of the laundry machinery, tools, and apparatus of every kind now in the premises at No. 365 West 19th St., formerly occupied by the Union Laundry Company, all as set forth and specified in the annexed schedule; to have and to hold all and singular the said goods and chattels to the said Clipper Laundry Company, its successors and assigns to their own use and behoof forever, and the said Standard Laundry Machine Company does hereby covenant with the said grantee that the said Standard Laundry Machine Company is the lawful owner of said goods and chattels; that they are free from all liens; that it has good right to sell the same as aforesaid; and that it will warrant and defend the same against the lawful claims and demands of all persons.

IN WITNESS WHEREOF, the said Standard Laundry Machine Company has caused its corporate name to be signed hereunto by its President, and its corporate seal to be affixed and duly attested by its Secretary, said corporate seal being affixed both to these presents and to the schedule hereunto annexed, all being done in the City of New York, on this 10th day of October, 1908.

(*Signature and attested seal as in Form* 188.)

The inventory or schedule of the goods conveyed by this bill of sale should be attached to it, and, in accordance with the provisions of the conveyance, be identified by the duly attested seal of the company.

(c) ASSIGNMENTS.

Form 186.—Assignment of Contract.

ASSIGNMENT.

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the payment by the Connecticut Valley Paper Mills, a corporation organized under the laws of the State of Connecticut and having its principal office and place of business at 525 Main Street, New Haven, Connecticut, of Twenty-five Thousand, Seven Hundred and Forty-five ($25,745) Dollars to the Holden Chemical Company, a corporation duly organized under the laws of the State of New York and having its principal office and place of business at 152 Warren Street, New York City, the receipt of which payment is by the last-named corporation hereby acknowledged, said Holden Chemical Company does hereby assign, transfer and convey to the said Connecticut Valley Paper Mills, all and singular, its right, title and interest of every kind in and to a certain contract (copy of which is hereunto annexed and made part of this present instrument) entered into on the 31st day of July, 1908, between Martin S. Coleman of Brooklyn, New York, and the said Holden Chemical Company, said contract vesting in the said last-named company, its successors and assigns, under the conditions set forth in said contract, the exclusive right to acquire and use all the inventions and processes that may hereafter be made, discovered or devised by the said Coleman for the manufacture of paper or to be used in connection therewith, said contract being conveyed to and accepted by the said Connecticut Valley Paper Mills with all its rights, privileges and obligations as herein set forth and as hereunto held by the said Holden Chemical Company.

IN WITNESS WHEREOF, the said Holden Chemical Company has hereunto caused its corporate name and seal to be affixed by its President and Secretary, all being done in the City, County and State of New York, on this 28th day of October, 1908.

{CORPORATE SEAL.}

HOLDEN CHEMICAL COMPANY,
By JAMES HOLDEN,
President.
HAROLD SHELDON,
Secretary.

Acknowledgment is not essential to this assignment but is advisable. The instrument as given does not relieve the assigning company from liability under the assigned contract. To secure this, a specific release from the other party to the assigned contract is essential. A simple form of such release to follow the foregoing contract or to be attached to it is as follows:

Form 187.—Assent to Assignment of Contract.

I, Martin S. Coleman of Brooklyn, New York, party of the first part to a certain contract entered into on the 31st day of July, 1908, with the Holden Chemical Company of New York City, do for good and valuable considerations, the receipt of which is hereby acknowledged, consent and agree to the transfer of said contract to the Connecticut Valley Paper Mills as set forth in the foregoing assignment, and to the substitution of the said Connecticut Valley Paper Mills for the Holden Chemical Company in said contract, and do hereby release, relieve and discharge the said Holden Chemical Company from any claim, liability or other obligation for, on account of or by reason of said contract.

Witness my hand and seal this 28th day of October, 1908.

MARTIN S. COLEMAN. [L. S.]

The assignment of contract which follows is informal but sufficient where the whole transaction is well understood. In practice it is usually endorsed on the back of the contract to be assigned or, with the word "within" changed to "above and foregoing," is placed on the last page of the contract.

Form 188.—Assignment of Contract. Endorsement Form.

For and in consideration of One Dollar and of other sufficient considerations, the receipt of all which is hereby acknowledged, the Sterling Power Company does hereby sell, assign and transfer to the Cohoes Light and Power Company the within contract with all the rights, privileges, obligations and undertakings thereof as therein set forth.

IN WITNESS WHEREOF, the signature and the attested seal of the said Sterling Power Company are hereunto affixed by its duly authorized officers this 16th day of November, 1908.

{CORPORATE SEAL.}

STERLING POWER COMPANY,
By MILLER STERLING,
President.

ATTEST SEAL:
HENRY WELLING,
Secretary.

The patent assignment which follows is in general accord with the forms approved by the Patent Office.

Form 189.—Assignment of Patent. Individual to Corporation.

ASSIGNMENT OF PATENT.

WHEREAS, I, Alan Hudson, of Newburgh, County of Orange, State of New York, did obtain letters patent of the United States for an improvement in Car Couplings, which letters patent are numbered 605,948, and bear date the 6th day of November in the year 1908; and

WHEREAS, I am now the sole owner of said patent, and of all rights under the same; and

WHEREAS, The Montauk Car Coupler Company, a corporation duly organized under the laws of the State of New Jersey, and having its principal office and place of business at No. 15 Exchange Place, Jersey City, New Jersey, is desirous of acquiring the entire interest in the same together with all claims for profits and damages arising from past infringements thereof, and the right to sue for and recover in its own name on all claims for such infringements:

NOW, THEREFORE, To all whom it may concern, be it known, that for and in consideration of the issue to my order by the said Montauk Car Coupler Company of its entire capital stock, excepting Ten (10) Shares heretofore issued to the incorporators of said Company, the receipt of which aforesaid stock, amounting to Ninety-nine Thousand ($99,000) Dollars, is hereby acknowledged, I, the said Alan Hudson, have sold, assigned and transferred, and by these presents do sell, assign and transfer, unto the said Montauk Car Coupler Company, the whole right, title and interest for the United States, its colonies and dependencies, in and to the said improvement in car couplings, and in and to the letters patent therefor aforesaid; and the inventions covered thereby, together with all claims for profits and damages arising from past infringements of the said letters patent, and the right to sue and recover, in its own name, on all claims for such infringements, the same to be held and enjoyed by the said Montauk Car Coupling Company for its own use and behoof, and for the uses and behoof of its legal representatives, successors and assigns, to the end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal at Newburgh, County of Orange, State of New York, this 4th day of December, 1908.

ALAN HUDSON. [L. S.]

In presence of
JACOB ELLIS.
HENDRICK N. ENSLOW.

An assignment of patent does not require notarial acknowledgment under the rules of the Patent Office, but, as an acknowledgment, as already stated, is *prima facie* evidence of the due execution of the instrument, it is usually affixed.

CHAPTER XLI.

BOOKS OF RECORD.

(a) TRANSFER BOOK.

The transfer book contains blank forms of assignments, which when properly filled effect the specified transfers of stock, and also afford a formal record of these transfers. (See §§ 33, 34, 36-39.) The following form of transfer book is generally used by corporations in which stock transfers are not frequent.

Form 190.—Transfer Book.

NEWARK TRANSPORTATION COMPANY.

Ledger Folio 35. Transfer No. 125.

For Value Received, I hereby sell, assign and transfer to John H. Sheldon of New York City, Fifty (50) Shares of the Capital Stock of the above-mentioned Company now standing in my name on the Company's books and represented by surrendered certificates Nos. 62, 63.

Witness my hand and seal this 15th day of August, 1908, at Newark, New Jersey.

HAROLD FISKE, [L. S.]
By LEONARD GORHAM,
Attorney.

New Certificates Nos. 135, 136, 137
Issued to John H. Sheldon.
Ledger Folio 64.

(See § 36.)

The ledger folio in the upper left-hand corner of the form given indicates the stock ledger page on which appears the account of the party assigning the stock. The ledger folio below gives the stock ledger page on which the account of the assignee appears. As the numbers of both the surrendered and issued certificates also appear, reference is easy to the stock certificate stubs on which the transaction is again recorded.

Form 191.—Transfer Book. Condensed Form.

We, the transferrers hereunder, owners of record of the Capital Stock entered below, do by attorney undersigned, hereby respectively sell, assign said Company set opposite our respective names, all as set forth below.

Date.	Certificates Surrendered.		Transferrer.	Ledger Folio.	Certificates Issued.	
	Numbers	Shares			Numbers	Shares.
1908						
Oct. 1	175	50	Henry H. Brown	48	862	50
2	365	75	Farrell T. Smith.	400	863	50
					864	25

Frequently the transfers of this form of transfer book are provided with stubs, upon which also appear the data relating to the transfer. As the transfers remain in the book, and are available at any time for reference, such stubs are entirely unnecessary.

Another form of transfer book used by the larger corporations is given in Form 191. This shows the upper portion of a page. The blanket assignment at top enables the record of each transfer to be made on a single line. (See § 36.)

In the entries shown, the second transferrer has surrendered a single certificate for seventy-five shares to be issued to two different parties, and two partial entries are therefore necessary. If a single party surrendered several certificates to make up the total number of shares to be transferred, each certificate may be entered on a separate line, or, if not too numerous, the certificate numbers and amounts may be interlined so that the entire transaction appears on a single line of the record.

of the Harris Smelting Company represented by the surrendered certificates and transfer to the transferees indicated, the number of shares of stock of

Transferee.	Ledger Folio.	Address.	Signature of Attorney.
Frank T. Lord...	150	170 Broadway, N. Y.....	Howard H. Benson
John H. McLane.	170	Bound Brook, N. J.....	Howard H. Benson
H. T. Maxwell..	162	185 West End Ave., N. Y.	Howard H. Benson

(b) Stock Book and Stock Ledger.

The following forms of stock book and stock ledger comply with the requirements of the statutes in almost every state of the Union. (See § 35.)

Form 192 (page 372) represents the upper portion of a page from the combined stock book and stock ledger. The leaves of the book are usually indexed, and the accounts arranged in alphabetical order—in New York and some few other states as a matter of statutory requirement; elsewhere as a matter of convenience. If the stock is not active, more than one account may appear on a page, each account being separated from the one that follows by a heavy single or double line.

One line across the entire page of this ledger is devoted to each transaction whether a purchase or a sale. In the second column, if stock is purchased, is entered the name of the stockholder from whom the stock is transferred, but if stock is sold, the name of the party to whom the certificate is issued. The third column, "Amount Paid

Form 192.—Stock Book and Stock Ledger.

JOHN H. GORDON,
1750 Amsterdam Ave., New York City.

Date.	From or to Whom Transferred.	Amount Paid Thereon.	Certificate Numbers.		Number of Shares.	
			Issued.	Surrendered.	Disposed of	Acquired.
1908						
April 5	Original Issue	Full-paid	25	...	...	150
May 4	From Henry Jones	"	150	..	...	50
May 15	To Frank Wilson	"	165	25	75	...
June 1	To Jesse Owens	"	...	165	75	...

Thereon"—has no reference to the amount paid for the stock by the party purchasing save in case of original issue. It is merely intended to show the amount received by the corporation on the stock transferred, thereby indicating the amount, if any, still due to the corporation. The record of this column is ordinarily of little or no value. It is included in the present form merely in compliance with the statutory requirements of some few of the states.

The fourth column shows the number of the certificate issued to the party when he acquires stock; the fifth column the numbers of the certificates surrendered by him when he disposes of stock. If he sells but a portion of the stock represented by a certificate—as in the third entry of the form given—the number of the new certificate issued to him for the balance of the unsold stock is entered in the fourth column.

In the sixth column is entered the number of shares disposed of when sales are made, and in the seventh column the number of shares acquired when stock is purchased. These two last columns constitute the stock ledger proper, and the amount of stock belonging to the party with whom the account is kept may be found by taking the difference between the footings of these columns.

It sometimes happens that a party acquiring stock, instead of directing its issue to himself in a single certificate, will have it issued in a number of certificates. The entry in the stock book then varies. Sometimes a separate line is devoted to each certificate issued, but the method is cumbrous. If the number of certificates issued is small, the transaction may be entered on a single line, all the certificate numbers appearing in the proper space in the fourth column in small figures; or two or more lines might be accorded the transaction in order to allow room for the entry of these numbers. Where the number of certificates issued is very large, the transaction may be entered on a

single line, and the certificate numbers be noted at the foot of the page, reference thereto appearing in the fourth column where the numbers would otherwise have been entered. The same conditions obtain, and the arrangement of the entry is similar when a number of certificates are surrendered for cancellation on a single sale.

Form 193.—Stock Book and Ledger.

NAME, Joseph C. Campbell.

Date.	To Whom Transferred.	Certificate Nos.		Number of Shares.
		Surrendered.	Reissued.	
1908.				
July 10	Albert D. Rogers	65	...	50
Aug. 15	W. C. Baker	45	135	40
Sept. 1	M. P. Frazer	135 65	180	90
Dec. 5	Geo. Kelley	125	...	40
" 31	Balance			100
				320

The stock book and stock ledger given in Form 193 combines in compact form all the requisites of the usual stock ledger, while likewise complying with the statutory requirements of almost every state of the Union.

The form as given shows the upper portion of a page. The leaves of this book are indexed to facilitate alphabetical arrangement of the accounts. On the right-hand side of the account the party is credited with stock acquired, and on the left-hand side is debited with any stock disposed of by sale or otherwise. The difference between the two sides shows at any time the amount of stock standing in his name.

On the left or sales side of the account the third column shows the numbers of the surrendered certificates, the fourth the number of the certificates reissued to the transferrer in case but a portion of the stock represented by a surrendered certificate is sold. The fifth column shows the number of shares sold. On the right-hand or credit side,

RESIDENCE, Ridgewood, New Jersey.

Date.	From Whom Transferred.	Amount Paid Thereon.	Issued Certificate Nos.	Number of Shares.
1908.				
June 1	Original Issue	Full-paid	45	100
" 15	J. G. Cameron	"	65	50
July 18	H. C. Dewey	"	75	80
Aug. 1	J. B. Stewart	"	125	40
Sept. 15	H. C. Cornell	"	175	50
				320

the second column gives the name of the party whom the purchased stock was transferred. The fourth shows the number of the certificates issued to the party in whose name the account stands, and the last column shows the number of shares acquired.

The third column on the right-hand side—"Amount Paid Thereon"—is put in solely in compliance with the requirements of New York, and some few other states, as explained in connection with Form 192. Its record is of but little importance, and the column may be omitted to advantage when not required by statute.

Should a number of certificates be issued or surren-

dered in a single transaction, the entry or entries may be arranged as explained for the preceding form of stock book and stock ledger, and as shown in the third entry on the sales side of the present form.

In some few states when stock is subscribed for and the subscription price is to be paid in instalments, the instalments due and paid must be shown by the stock ledger. Two ledger columns must then be added to the stock book and stock ledger. Instalments coming due are then debited in the left-hand column and payments are credited in the right-hand column, all in usual ledger form.

(c) FINANCIAL RECORDS.

Form 194.—Instalment Book.

INSTALMENT BOOK.

Instalment No. 3 of 10 per cent. Due Nov. 1, 1908.

SUBSCRIBERS' NAMES.		SHARES.	AMOUNT.	INTEREST.	PAID.	WHEN PAID.
Abbott, John.....		75	$750.00	....	$750.00	Nov. 1
Benton, William H		50	500.00	$1.25	501.25	Nov. 15
Brown, Howard....		60	600.00	....	600.00	Oct. 27

(See § 167.)

The purpose of the instalment book is to record each instalment of subscriptions as it becomes due. Accordingly the page or pages on which an instalment is entered must be headed in accordance with the facts. In the first column appear the subscribers' names arranged alphabetically. The second column is intended for the ledger folio which need only be entered when, as is the case in some states, instalment payments must be posted to the stock ledger. The third column gives the number of shares subscribed for; the fourth column the amount of the particular instalment; the fifth column any interest due in case payment of the instalment is delinquent; the sixth column the amount paid, and the seventh the date of payment. An additional column is sometimes added for comments.

The cash received on instalment payments will also appear on the stubs of the instalment scrip book as the certificates are issued (See Form 8), and the footing of column six of the stock instalment book should therefore agree with the sum of the similar payments shown on the stubs of the instalment scrip book.

Form 195.—Dividend Book.

DIVIDEND BOOK.

Dividend No. 5 of 2%. Declared Nov. 1, 1908. Payable Dec. 15, 1908, to Stockholders who appear of Record Dec. 1, 1908.

STOCKHOLDERS' NAMES.	SHARES.	AMOUNT.	PAID.	RECEIVED BY.
Alsop, John H.....	50	$100.00	Dec. 18	John H. Alsop.
Barrington, Harvey.	25	50.00	Dec. 15	Howard Jones, Atty.

(See § 168.)

Usually the dividend book is employed only when stockholders are required to call in person and receive and receipt for dividends. Each dividend as declared is recorded on one or more pages, a statement of the facts appearing at the head of the uages of the particular record. The form is simple and its method obvious. Stockholders' names are arranged alphabetically, and the signatures appearing in the last column serve as a receipt for the dividend payment. A signature by an attorney, as in the second example, is not sufficient unless authorized by due power of attorney filed with the treasurer of the company. (See Form 179.)

CHAPTER XLII.

BONDS OF INDEMNITY.

(a) Treasurer's Bond.

The treasurer's bond is the formal undertaking of parties named therein and by whom the bond is signed, that in event of loss arising from specified acts, failures or omissions on the part of the treasurer, they will make good the loss up to the amount of the bond. (See § 154.) Formerly bonds of this nature were almost invariably signed by the treasurer and his friends. Of recent years, however, surety company bonds have largely superseded these personal bonds.

The following is a common form of personal bond.

Form 196.—Treasurer's Bond. Personal.

.....

Treasurer's Bond.

Know All Men by These Presents:

That we, Robert A. Bruce of New York City, as principal, and William H. Cain of Newark, New Jersey, and H. B. McMillan of Brooklyn, New York, as sureties, are held and firmly bound unto the Sterling Transportation Company, a corporation duly organized under the laws of the State of New York, in the sum of Ten Thousand ($10,000) Dollars, to the payment of which to the said corporation, its successors or assigns, we do by these presents jointly and severally bind ourselves, our heirs, executors and administrators.

Signed and sealed this 15th day of August, 1908.

The condition of the above obligation is that:

Whereas, The said Robert A. Bruce has been elected Treasurer of the said Sterling Transportation Company for the period of one year from the 10th day of August, 1908, and may hereafter be re-elected to or continue in such office for a further period:

Now, Therefore, If the said Robert A. Bruce shall hereafter in all respects fully, faithfully and honestly perform and discharge the duties of

said office so long as he shall continue therein, both during the term for which he has been elected and during such further time as he may continue therein, whether by re-election or otherwise, and shall when properly so required, fully and faithfully account to the said corporation, its successors or assigns, for all moneys, goods and properties whatsoever, for or with which the said Robert A. Bruce may in anywise be accountable or beholden to the said corporation, and if at the expiration of his term of or continuance in office, or prior thereto in the event of his death, resignation or removal from office, all books, papers, vouchers, money and other property of whatever kind placed in his custody as Treasurer of said corporation, shall be forthwith restored to the said corporation, its successors or assigns, then this obligation shall be void, but otherwise to remain in full force and effect.

Robert A. Bruce. [L. S.]
William H. Cain. [L. S.]
H. B. McMillan. [L. S.]

Signed, sealed and delivered
in the presence of
John J. Barr.
W. H. Carpenter.

.....

The treasurer's bond must be given under seal, and, while not legally necessary, personal bonds are usually acknowledged.

Personal bonds are usually sweeping in their nature, covering any and all losses arising through any errors, misdeeds or omissions of the treasurer. When, however, a surety company enters the bonding field, the guarantees are reduced to the lowest possible terms,—usually to losses arising through the personal dishonesty of the employee amounting to "larceny or embezzlement." The forms for these bonds are furnished by the surety companies and vary according to the company and the conditions. The general form employed is too lengthy for reproduction in the present volume.

(b) Bond for Lost Stock Certificate.

When a stock certificate is lost or destroyed, a bond of indemnity is usually required before the corporate authorities will replace the lost certificate. (See § 41.)

Form 197.—Indemnity Bond. Lost Stock Certificate.

.....

INDEMNITY BOND.

KNOW ALL MEN BY THESE PRESENTS:

That we, John R. McAllister of Yonkers, New York, as principal, and Charles Foster and Henry H. Clark, both also of Yonkers, New York, as sureties, are held and firmly bound unto the Sterling Transportation Company, a corporation duly organized under the laws of the State of New York, in the sum of Five Thousand ($5,000) Dollars, to the payment of which to the said corporation, its successors or assigns, we do by these presents jointly and severally bind ourselves, our heirs, executors and administrators.

Signed and sealed this 18th day of September, 1908.

The condition of the foregoing obligation is that:

WHEREAS, The said John R. McAllister is the owner of record, as shown by the stock book of the corporation, of Forty (40) Shares of the Common Capital Stock of the said Sterling Transportation Company, each of the par value of One Hundred ($100) Dollars, the ownership of said stock being further evidenced by Certificate No. 375 issued in the name of the said John R. McAllister on the 15th day of August, 1908; and

WHEREAS, The said John R. McAllister has made application to the Board of Directors of the Sterling Transportation Company for the issue in his name of a new certificate for the said Forty (40) Shares of stock of the said Company, alleging that original Certificate No. 375 is lost, stolen or destroyed and that its present whereabouts and condition are unknown to him; and

WHEREAS, By due and formal resolution of the said Board of Directors, said application has been granted and a new certificate for said Forty (40) Shares of the stock of the said Sterling Transportation Company has this day been issued to the said John R. McAllister:

NOW, THEREFORE, If the said John R. McAllister, his heirs, executors and administrators, or any of them, do and shall at all times hereafter, save, defend and indemnify the said Sterling Transportation Company, its legal successors or assigns, of, from and against all demands, claims or causes of action arising from or on account of the loss of said Certificate No. 375 for Forty (40) Shares of the Common Capital Stock of said Company and the issue of said new certificate in place thereof, and of and from all costs, damages and expenses that shall or may arise because of said reissue, and shall also deliver or cause to be delivered up to the said Sterling Transportation Company for cancellation the said missing Certificate No. 375 whenever and so soon as the same shall be found or recovered, or come into his possession, then this obligation shall be void; otherwise to remain in full force and effect.

JOHN R. MCALLISTER. [L. S.]
CHARLES FOSTER. [L. S.]
HENRY H. CLARK. [L. S.]

Signed, sealed and delivered
in the presence of
DANIEL T. BAIRD.
JOHN K. STONE.

CHAPTER XLIII.

THE CORPORATE CALENDAR.

The corporate calendar is an orderly statement of the important corporate formalities that must be attended to at fixed periods, so arranged that the secretary may at any time by a mere glance see just what corporate duties require his attention.

The amount of detail entered on the corporate calendar will vary according to the preference of the particular secretary, from a mere skeleton outline of the reports and notices required by the statutes and by-laws, to a fairly complete digest of corporate procedure. It is advantageous to enter reasonably full details, as much subsequent research may thereby be avoided.

The corporate calendar is frequently entered in the minute book. More conveniently it is prepared on a special card or cards, or on a desk calendar, in either case so placed or hung that it is plainly in sight. Or if the minute book plan is preferred, a small skeleton calendar or "tickler" may be prepared in addition, which, kept on the desk, will call attention to the dates upon which the calendar in the minute book should be consulted.

The calendar which follows is given merely to show the general plan and the matter which is usually included. It is arranged for a New York corporation having its principal place of business in the City of New York and holding its annual meeting of stockholders on the second Tuesday of January at 3 P. M., with quarterly meetings of directors on the second Wednesday of January, April, July and October at 4 P. M. Its by-laws require ten days'

notice of annual meetings and five days' notice of directors' meetings. Its stock book is closed twenty days before the annual meeting.

It will be noticed that under this arrangement the January directors' meeting will usually fall on the day following the annual meeting at which directors are elected. If then, this election is duly held, the regular notice of the directors' meeting is of no effect as to the newly elected directors, and, if the by-laws are mandatory as to notice, the meeting must be postponed or omitted, or the secretary, disregarding the notice already given, may provide for the meeting of the board on the proper date by means of a call and waiver signed by all the newly elected directors. (See §§ 127-129; Form 48.)

In the calendar which follows the date for each corporate act, as filing reports, payment of taxes, etc., is in most cases entered fifteen days in advance of the last day allowed by law, while a memorandum is also entered as a precautionary measure on the last day. Thus, a report that may be deferred if desired until the 31st day of January, is entered on the calendar under date of January 16th. This is a matter that may be varied to suit the individual.

Form 198.—Corporate Calendar. New York.

CORPORATE CALENDAR
of the
HUDSON RIVER PACKING COMPANY
of New York City.
1909.

January.

2nd. *Franchise Tax Payable.* Must be paid before January 15th. Based upon November report to State Comptroller. Statement of amount of tax is sent to Company by State Comptroller. Checks should be made payable to State Treasurer.

Notify Stockholders of annual meeting to be held January 12th.

8th. *Notify Directors* of meeting to be held January 13th. If directors are elected at annual meeting (January 12th), this notice will be vitiated as to all directors elected at such meeting and must be replaced by waiver of notice signed after election by all the newly elected directors.

11th. *City Assessments* made for 1909 (second Monday in January). Books open for correction till March 31st inclusive. If notice of assessment is not received in the early part of January, it should be sent for. Tax Commissioners usually send notice but are under no obligation to do so.

12th. *Annual Meeting* of stockholders at 3 P. M.

13th. *Directors' Meeting* at 4 P. M. If directors were elected at annual meeting, waiver of notice should be signed by each new director.

15th. *Last Day* for payment of State Franchise Tax. Also on this date unpaid city tax bills for personal taxes may be sent Marshall for collection.

16th. *Annual Report* to State officials. Must be filed during January and not later than January 31st with Secretary of State. No filing fees. Blanks not supplied by officials. No penalty incurred for omission of the report unless such filing is requested by some stockholder or creditor of the Company, and not then if the report is filed within thirty days after the request is made.

30th. *Last Day* for filing annual report, January 31st falling on Sunday.

March.

16th. *Statement and Application* for revision of unsatisfactory assessments, if not already filed, should be sent in to the Commissioner of Taxes and Assessments. Will not be received after March 31st save for real estate. Blanks furnished by Commissioners. No filing fees.

31st. *Last Day* for filing application for revision of city assesments, save on real estate, which may be revised at any time before payment of the tax.

April.

9th. *Notify Directors* of meeting to be held April 14th.

14th. *Directors' Meeting* at 4 P. M.

July.

9th. *Notify Directors* of meeting to be held July 14th.

14th. *Directors' Meeting* at 4 P. M.

October.

4th. *City Taxes Payable.* Statement of amount may be obtained from Assessors' office.

8th. *Notify Directors* of meeting to be held October 13th.

13th. *Directors' Meeting* at 4 P. M.

16th. *City Taxes.* If not paid by November 1st, 1909, draw interest at the rate of 7% per annum, computed from the first Monday in October, 1909.

November.

1st. *Comptroller's Report.* Must be sent in on or before November 15th. Blanks furnished by and report made to State Comptroller. No filing fees. Penalty may be incurred by failure to make this report.

December.

22nd. *Close Transfer Books* for annual meeting of January 11th, 1910.

CHAPTER XLIV.

CORPORATE BOND ISSUES.

The more important instruments involved in an issue of corporate bonds are the bond itself, which is comparatively simple in form, and the mortgage or deed of trust, which is lengthy and complex.

The corporate bond in its usual form is a promissory note, differing from the ordinary corporate note only in its formality, its more complete statement of the conditions under which it is issued, its formal execution and in its being one of a series secured by the same collateral. (See Form 199.)

There is practically no difference as to form between the bond and the short term note so frequently issued by corporations of the present day, save as to the length of time for which they run. The short term note, as its name indicates, is usually given for a short period—one to five years—while the bond usually extends over a much longer period, ranging from five to one hundred years or more.

Interest on bonds is usually represented and provided for by means of coupons, which are in effect promissory notes, payable to bearer, each calling for the payment of one instalment of interest on the bonds. (See Form 200.) This interest when due is payable only on surrender of the proper coupon and, in the absence of some good reason otherwise, such as notice that the particular coupon has been stolen, is payable to anyone who presents the coupon.

Interest on bonds is usually payable semi-annually and each of the coupons of a coupon bond calls for the exact amount of one of the semi-annual interest payments on that bond. Thus a bond running ten years with interest payable semi-annually, will have attached to it twenty coupons. Each coupon bears the same number as its bond for purposes of general identification, but also has a serial number or some specific statement indicating the order in which it comes dues, and the particular interest payment for which it calls.

Coupon bonds are usually made payable to bearer, and ownership passes by delivery. When it is desired that bonds shall not pass by mere delivery, they are registered, i. e. issued in the name of some particular person as is a certificate of stock, the bond thereafter being transferable only on the books of the company.

Coupon bonds are sometimes registered as to principal, but the coupons are still made payable to bearer. The interest then is paid to anyone who presents the coupon, but the principal when due is only paid to the person in whose name the bond stands on the books of the company.

Bonds without coupons are always registered, are transferred only by assignment, interest is payable to the registered owner alone, and is usually paid by check sent out to these registered owners.

Coupon bonds payable to bearer and registered bonds without coupons are often issued under the same deed of trust. Usually when this is done, the two classes of bonds are made interchangeable, i. e., the holder of a coupon bond may at any time exchange it for a registered bond, or vice versa. The advantage of the unregistered coupon bond is found in the readiness with which it may be transferred. The advantage of a registered bond lies in the difficulty of its negotiation in case the bond is lost or stolen.

The following form is that of a coupon bond, the ownership passing by mere delivery. It may, however, be registered at the option of the owner though this registration does not affect the coupons. (See Form 200.) These pass by delivery alone and are payable to bearer regardless of whether its bond be registered or transferable by delivery.

Form 199.—Coupon Bond.

.....

UNITED STATES OF AMERICA.
STATE OF NEW YORK.

No. 375. $500.00

MAXWELL COMPRESSOR COMPANY.
First Mortgage, Six Per Cent., Gold Bonds.

KNOW ALL MEN BY THESE PRESENTS, That the Maxwell Compressor Company, a corporation organized under the laws of the State of New York, for value received, hereby promises to pay to the bearer hereof, or if this bond is registered, to the registered holder thereof, at the office of the Securities Trust Company of the City of New York, on the first day of December, nineteen hundred and thirty-eight, in gold coin of the United States of America, of the present standard of weight and fineness, or its equivalent, the sum of Five Hundred Dollars, without deduction from either such principal or interest for or on account of any United States, State, municipal or other tax or taxes which the Maxwell Compressor Company, its successors or assigns, may be required to pay or deduct therefrom, and the Maxwell Compressor Company hereby covenants and agrees to pay all such tax or taxes, and in the meantime to pay interest upon the said sum of Five Hundred Dollars from and after the first day of December, nineteen hundred and eight, at the rate of six per cent. per annum, payable in like gold coin, or its equivalent, at the same place, semi-annually, on the first days of June and December in each year, beginning with the first day of June, 1909, on presentation and surrender of the coupons hereto attached as each of them becomes due.

This bond is one of a series of one thousand (1,000) bonds of the same tenor and date, aggregating five hundred thousand ($500,000) dollars, numbered consecutively from one to one thousand, both inclusive, for the sum of five hundred ($500) dollars each, all of which bonds are secured equally by a deed of trust, which is a first mortgage upon the properties of the Maxwell Compressor Company, executed and delivered by the said Maxwell Compressor Company to the said Securities Trust Company, as Trustee, granting and conveying in trust and mortgaging as security for the payment of the principal of said bonds at maturity, at par, and the interest on said bonds, payable semi-annually at the rate aforesaid, all the real estate and other property of the said Maxwell Compressor Company mentioned and described in said deed of trust, with full power to use and sell the same in the event of default in payment of the bonds or coupons, or any of them, and apply the proceeds to the payment of same as in said deed of trust provided. This bond is issued, received and held subject to all and singular the terms and conditions contained in the deed of trust aforesaid.

This bond is further secured by a sinking fund, which shall consist of and be maintained by the payment to the said Securities Trust Company

by the Maxwell Compressor Company on the first day of December, 1913, and on each succeeding first day of December thereafter, until the redemption of all the bonds issued under said deed of trust, of twenty-five dollars for each thousand dollars of bonds then issued and outstanding, such moneys so paid to be used in the purchase of outstanding bonds at the lowest price at which they may be had, not exceeding, however, one hundred and ten per centum of the face of said bonds plus accrued interest, and if bonds cannot be so purchased, such moneys shall be used in the redemption of the bonds outstanding, as hereinafter provided.

This bond shall not become obligatory until the certificate endorsed hereon shall be signed by the Trustee, and when so authenticated by the signature of the Trustee the title to said bond shall pass by delivery, unless said bond is registered, and, if registered, the title thereto shall pass only by transfer on the books of said Trust Company, and no transfer except upon said books shall be valid unless the last transfer shall have been to bearer, which shall restore transferability by delivery.

This bond is redeemable, at the option of the Maxwell Compressor Company, on any interest day at any time after the first day of December, 1913, at 110 per cent. of its face value, plus accrued interest, provided that thirty days' notice of such redemption shall be given the holder thereof by notice published once a week for four consecutive weeks prior to such redemption, in a newspaper published in New York City.

IN WITNESS WHEREOF, the said Maxwell Compressor Company hath caused these presents to be signed by its President, and its corporate seal, duly attested by its Secretary, to be hereunto affixed, and hath hereunto affixed coupons with the name of its Treasurer engraved thereon, and hath caused this bond to be dated the first day of December, A. D. one thousand, nine hundred and eight.

{CORPORATE SEAL.}

MAXWELL COMPRESSOR COMPANY,
By HOWARD M. MAXWELL,
President.

ATTEST:
FRANK PAULSON,
Secretary.

.....

The coupon form which follows is as it appears attached to the preceding bond.

Form 200.—Coupon.

.....

No. 1. $15.00

MAXWELL COMPRESSOR COMPANY

will pay to the bearer at the office of the Securities Trust Company of the City of New York the sum of fifteen ($15) Dollars, in United States Gold Coin, or its equivalent, on the first day of June, 1909, being six months' interest on its First Mortgage, Six Per Cent., Gold Bond No. 375.

WILLIAM H. POWERS,
Treasurer.

.....

The following trustee's certificate is as it appears upon the bond shown in Form 199.

Form 201.—Trustee's Certificate.

The Securities Trust Company of the City of New York hereby certifies that the within Bond is one of the series of Bonds described in the Deed of Trust therein mentioned.

SECURITIES TRUST COMPANY OF THE
CITY OF NEW YORK,
Trustee.
By MALCOLM MCDOUGALD,
President.

The formalities of a bond issue are usually regulated by the statutes of the particular state in which the corporation is organized. Thus in New York an issue of bonds requires (1) a stockholders' resolution or written consent; (2) a certificate of the corporate officials that the stockholders' consent has been given; (3) a directors' resolution reciting the facts, authorizing the officers to proceed in the matter, and providing for the details of the transaction.[1]

In some states the mere resolution of the board of directors is sufficient to authorize a bond issue. In a large number of states the assent of a prescribed majority of the stockholders is a requisite. As a matter of prudence and good business, a proper stockholders' authorization is always desirable regardless of the statute requirements of the particular state.

The following deed of trust, while drawn in compliance with the requirements of the New York statutes, may be readily adapted for use in any other state.

Form 202.—Deed of Trust.

DEED OF TRUST.

THIS INDENTURE, made and entered into this 12th day of November one thousand nine hundred and eight, by and between the Maxwell Compressor Company, a corporation duly organized and existing under the laws of the State of New York, having its office at No. 170 Broadway, New York City, hereinafter called the Compressor Company, party of the first part, and the Securities Trust Company of the City of New York,

[1] See Harrison's New York Corporations, Forms, 64-67.

a corporation duly organized and existing under the laws of the State of New York, having its principal office at No. 98 Wall Street, New York City, as Trustee, hereinafter called the Trustee, party of the second part, Witnesseth:

WHEREAS, The Board of Directors of the said Compressor Company has, by the authority and with the consent of the stockholders thereof legally given, duly resolved to borrow five hundred thousand dollars for the lawful business purposes of the said Company, and for that purpose to execute and issue its first mortgage, six per cent., thirty years, gold bonds of the par value of five hundred dollars each, dated the first day of December, 1908, and payable on the 1st day of December, 1938, in gold coin of the United States of, or equivalent to, the present standard of weight and fineness, said bonds to bear interest at the rate of six per cent. per annum, payable in like gold coin, semi-annually, on the first days of June and December in each year, from the first day of December, 1908, until the payment of the principal amount thereof; the payment of the principal and interest of said bonds to be secured by a mortgage or deed of trust that shall be a first mortgage on the entire property of the said Compressor Company as hereinafter described, said deed of trust to be in substantially the form of this indenture; and

WHEREAS, The bonds so to be issued are to be in substantially the form following, viz.:

(*See Form 199.*)

AND WHEREAS, There are to be attached to each of the said bonds, at the time of the issue thereof, coupons representing the semi-annual instalments of interest which are to become due thereon, each of which coupons is to be substantially of the following tenor, the proper coupon number, date of payment, amount of the bond and its number, and the engraved fac-simile signature of the Treasurer of the Compressor Company, having been inserted in the respective blanks therefor, to wit:

(*See Form 200.*)

AND WHEREAS, On each of said bonds there is to be endorsed a certificate of the Trustee or its successor appointed hereunder, of the following tenor:

(*See Form 201.*)

NOW, THEREFORE, the said Compressor Company, in consideration of the premises and of the sum of one dollar to it in hand paid by the said Trustee, the receipt whereof is hereby acknowledged, and in order to secure the due payment of the principal and interest of the bonds to be issued hereunder, and to insure the faithful performance of the covenants and agreements herein contained, hath granted, bargained, sold, aliened, assigned, conveyed, transferred and set over, and by these presents doth grant, bargain, sell, alien, assign, convey, transfer and set over unto the said Trustee, its successors and assigns;

All of the following described property and franchises of the Company, to wit:

(*Specific description of the property mortgaged.*)

TO HAVE AND TO HOLD all and singular the said property, with all real estate, buildings, fixtures, articles and property of every kind, belonging to or pertaining to the same unto the said Trustee, its successors and assigns forever;

IN TRUST, NEVERTHELESS, for the equal *pro rata* benefit and security of any and all persons and parties who may be or become the owners or lawful holders of any of the bonds to be issued hereunder and secured

hereby, irrespective of date or priority of issue, without any discrimination, preference or priority of any one bond over another or others, by reason of priority in time of issue, or sale, or negotiation thereof, or otherwise, and to secure the due payment of each of the said bonds together with the interest thereof, and for the uses and purposes and upon the terms and conditions hereinafter declared and expressed; and

IT IS HEREBY EXPRESSLY COVENANTED AND AGREED by and between the parties hereto that all such bonds are to be issued, negotiated and received, and that the said property and franchises mortgaged are to be held by the Trustee upon and subject to the following further trusts, uses, conditions and covenants, that is to say:

First.—The bonds to be issued hereunder shall be executed on behalf of the Compressor Company by its proper officers and shall be delivered to the Trustee for certification, and said Trustee shall certify and deliver said bonds so certified upon the order of the Board of Directors of the Compressor Company. An order purporting to be the order for delivery of said bonds and believed by the Trustee to be genuine shall be conclusive authority and full protection to the Trustee for the certification and delivery of the bonds.

Only such bonds as shall bear thereon endorsed the Trustee's certificate, duly executed, shall be secured by this indenture, or entitled to any lien, right, or benefit thereunder, and such certificate of the Trustee upon any such bond executed by the Compressor Company shall be conclusive evidence that the bond so certified has been duly issued thereunder, and that the holder is entitled to the benefit of the trust hereby created.

Before certifying or delivering any bond, all coupons thereon then matured shall be cut off, canceled and delivered to the Compressor Company.

Second.—All bonds secured hereunder may be registered in the name of the holder, when so requested by such holder, upon bond transfer books which the Compressor Company shall maintain and keep for such purpose at the office of the Trustee in the City of New York as long as any of the said bonds shall remain outstanding. After such registration such bonds shall be transferable only upon such transfer books, by the registered owner or his lawful attorney, and any such transfer shall be noted on the bonds by the indorsement of the Transfer Agent hereinafter appointed. After registration of any bond, the principal thereof shall be payable only to the registered owner, but the coupons shall be payable to the bearer upon presentation and surrender thereof, and shall be negotiable by delivery as if such bond was not registered.

Any registered bond may at any time be transferred by the registered owner thereof, upon said transfer books to bearer, and such transfer shall be noted upon said bond, and the said bond shall thereupon be negotiable by delivery as if it had never been registered, and each of said bonds shall continue subject to successive registrations and transfers to bearer at the option of the holder thereof.

For the purpose of registering and transferring said bonds as above set forth, the Securities Trust Company of the City of New York is hereby appointed and constituted Transfer Agent of the said Compressor Company.

Third.—Until default shall be made by the Compressor Company, its successors or assigns, in the payment of the principal or interest of the bonds hereby secured, or any of them, or in the performance of any of the covenants, agreements and provisions on its part to be kept and performed, as herein set forth, the Compressor Company, its successors and assigns shall be permitted to possess, manage, use and occupy the premises affected hereby, with all their appurtenances and belongings in all respects as fully as if this indenture had not been made.

Fourth.—If the Compressor Company shall well and truly pay to the holders thereof the principal of the bonds secured hereunder and the interest moneys becoming due thereon respectively at the time and in the manner specified in the said bonds and coupons thereto annexed, and shall keep and perform all the covenants, agreements and stipulations on its part in said bonds or in this agreement contained, then these presents and the trust hereby created shall cease and determine, and the said Trustee shall in such event release and discharge this mortgage and the property and premises encumbered thereby. The Trustee may also execute such release and discharge upon production by the Compressor Company or its assigns of all the bonds issued hereunder, together with the coupons thereto belonging, canceled or for cancellation, and the Trustee shall not be under any liability or obligation to inquire into the holding of said bonds by the Compressor Company or its assigns.

Fifth.—The said Compressor Company, while it shall be in possession of the mortgaged premises, and while there shall be no existing default in respect of the payment of the principal or interest of any of the said bonds of the Compressor Company, or in the performance of any of the covenants herein, may, with the consent in writing of the Trustee, sell any portion of the premises heretofore granted. If, in the opinion of the Board of Directors of the Compressor Company, such sale or change shall be expedient, said opinion shall be expressed in a resolution of the said Board, and the Trustee may upon delivery to it of a copy of the resolution of the Board of Directors to that effect release from the lien and operation of this indenture any part of the premises hereby mortgaged, provided that the purchase money from such sale or sales shall be paid to the said Trustee for application to the discharge of the bonds and coupons hereunder issued, as set forth in Section Fifteenth, or to be set aside to be applied by the Compressor Company in payment for other real or personal property or in betterments of or additions to some part of the premises mortgaged hereby, and until so applied shall be held by the Trustee. Any new property so acquired by the Compressor Company shall *ipso facto* become and be subject to the lien of this indenture as fully as if specifically mortgaged or pledged hereby, but if requested by the Trustee the Compressor Company shall execute special instruments of incumbrance upon such properties.

Sixth.—The Compressor Company covenants and agrees that it shall and will promptly pay the interest and the principal of the bonds hereby secured, at the time and in the manner specified in said bonds and the coupons thereto attached, without deduction from either such principal or interest for or on account of any United States, State, municipal or other tax or taxes which the Compressor Company, its successors or assigns, may be required to pay or deduct therefrom, and the Compressor Company hereby covenants and agrees to pay all such tax or taxes.

The Compressor Company further covenants and agrees that it shall and will, from time to time, promptly pay and discharge, or cause to be paid and discharged, all taxes, rates, levies or assessments and charges, ordinary and extraordinary, levied or imposed upon the premises and properties mortgaged to the Trustee to secure the payment of the bonds issued hereunder, whereby the lien of this indenture might or could be be held prior or equal to the lien of this indenture, so that the same shall not fall into arrears and so that the priority of this indenture given to secure said bonds shall be preserved.

The Compressor Company further covenants and agrees that it will not create nor suffer any mechanic's, laborer's or other similar liens to be created upon the premises and property mortgaged to secure the bonds issued hereunder, whereby the lien of this indenture might or could be

impaired, until the bonds so secured hereunder, with all the interest accrued thereon, shall have been fully paid and satisfied.

Seventh.—A sinking fund shall be created for the redemption of the bonds issued hereunder. It shall consist of and be maintained by the payment to the Trustee by the Compressor Company on the first day of December, 1913, and on each succeeding first day of December thereafter until the redemption of all the bonds issued hereunder, of twenty-five dollars for each thousand dollars of bonds then issued and outstanding, such moneys so paid to be used in the purchase of outstanding bonds at the lowest price at which they may be had, not exceeding, however, one hundred and ten per centum of the face value of said bonds, plus accrued interest, and if bonds cannot be so purchased, such money shall be used in redemption of bonds outstanding as provided and set forth in Section Fifteenth of this present indenture.

Eighth.—The Compressor Company covenants and agrees that this deed of trust delivered to the Trustee shall be a first mortgage upon the premises and property affected thereby, that the same shall be duly executed and recorded in the proper office of registry in the County of New York where the said premises are situated, and that the Compressor Company will execute and deliver such further deeds, transfers, pledges and assurances as the Trustee, under the advice of counsel learned in the law, shall reasonably require for the better accomplishing of the purposes and provisions of this indenture.

Ninth.—The Compressor Company covenants and agrees that all buildings, structures and machinery situated upon the properties affected by this mortgage given to secure the bonds issued hereunder, shall be kept insured during the entire term of this indenture to the amount of insurance on such properties usually allowed by insurance companies, against loss or damage by fire, and against loss or damage from boiler explosions, and that the said Compressor Company shall and will pay all premiums upon all policies for such insurance. All such policies shall be made payable to the Trustee, and shall be deposited with it for the benefit and protection of the bondholders should any loss occur from fire or boiler explosion during the term of this indenture. Any payments of insurance made under such policies may be applied directly by the Trustee to the repairing or replacement of the property damaged or destroyed, or it may authorize the Compressor Company to contract for such repairs or replacements, and pay part or all of the cost thereof from said insurance moneys. The Trustee may in its discretion employ such insurance moneys in the purchase or redemption of outstanding bonds as set forth in Section Fifteenth, instead of expending the same for repairs or replacement of property damaged or destroyed.

Tenth.—The Compressor Company covenants and agrees that it shall and will at all times keep the buildings, structures and appurtenances thereto, or any replacement or replacements thereof in good order and repair, provided, however, that in the event of total destruction of any building, the Compressor Company may, with the consent of the Trustee, add to the insurance moneys received thereon by the Trustee sufficient cash payments to release the special property upon which such building was situated, under the terms set forth in Section Fifth, whereupon the Trustee shall release the said property and the Compressor Company may dispose of the same at its discretion.

Eleventh.—The Compressor Company covenants and agrees that when and as the coupons attached to the bonds issued hereunder are paid, the coupons shall be canceled, and that no purchase or sale of the said coupons or advance or loan upon the same, made on behalf of, or at the request of, or with the privity of the said Compressor Company, and no

redemption of the said coupons, or any of them, by any guarantor of the payment of the same, shall be taken or operate as keeping the said coupons alive or in force under this indenture as against the holders of the bonds secured hereunder and of the coupons annexed thereto.

Twelfth.—In case default shall be made in the payment of interest on any of the bonds issued hereunder, and such default shall continue for a period of six months after demand, or in case default shall be made in the performance of any other covenant or condition hereby required to be kept or performed by the Compressor Company, and if the same shall continue for a period of six months after demand made for such performance, the Trustee may, and, upon the written request of the majority in amount of the holders of the bonds then outstanding, shall by written notice to the Compressor Company, declare the principal of all the bonds hereby secured, then outstanding, to be, and the same shall thereupon become immediately due and payable.

Thirteenth.—In case default shall be made in the payments of the principal or interest of any of the said bonds when the same is due and payable according to the tenor thereof, or if default shall be made in the performance of any other covenant or condition, hereby required to be kept or performed by the Compressor Company, and if any such default in payment or performance shall continue for a period of six months after demand by the Trustee, then and in every such case the Trustee, or its successors in the Trust, may by its attorneys and agents enter into and upon all and singular the premises hereby conveyed, and each and every part thereof, and operate and conduct the business of the said Compressor Company in all respects as the said Compressor Company might do in possession of the same; and may collect and receive all rents, income, revenue and profit to be derived therefrom, and after deducting all proper and necessary outlays and expenses as well as a just compensation for its own services and for the services of such attorneys, agents and assistants as it may, in its discretion, employ for any of the purposes aforesaid, said Trustee shall apply the rest and residue of the moneys received by it *pro rata* to the payment of the interest due upon such of said bonds as shall then be outstanding. In any such case if payment of all interest and any principal due shall be made in full and no suit to foreclose this mortgage shall have been begun or sale made, the said Trustee shall restore the possession of the premises so entered, to the Compressor Company without prejudice to similar entry later in case of similar default.

Fourteenth.—In case default shall be made in the payment of the principal or interest of the said bonds, when the same is due and payable according to the tenor thereof, or if default shall be made in the performance of any other covenant or condition hereby required to be kept or performed by the Compressor Company, and if any such default in payment or performance shall continue for the period of six months after demand, the Trustee may, and upon written request of the holders of a majority in amount of the registered bonds then outstanding, being first indemnified by them to its satisfaction, shall sell or foreclose upon, according to the proceedings by law prescribed in this state, all or any portion of the property held by it under this indenture, and such proceedings of sale or foreclosure shall be a perpetual bar both at law and in equity against the Compressor Company and against all persons claiming by, from or under it. After deducting from the proceeds of such sale or foreclosure, the proper allowance for all expenses thereof, including attorney's and counsel fees, and all other expenses or advances which may have been made or incurred by said Trustee in respect of the said property or the appurtenances thereto, and all payments which may have been made by it for

taxes or assessments, or in satisfaction of charges and liens, prior to the lien of the mortgages and deeds of trust to the Trustee thereon, or for insurance, as well as reasonable compensation for its own services, the Trustee shall apply the proceeds to the payments of such bonds and the coupons thereon as may be at the time unpaid, without giving preference of priority to one bond over another, but ratably to the aggregate amount of such unpaid principal and accrued and unpaid interest, and if any surplus remain after the payment in full of the principal and interest of said bonds, then the Trustee shall transfer and pay over such surplus to the Compressor Company.

Fifteenth.—It is covenanted and agreed between the parties hereto and any future holders of the bonds that the said bonds are redeemable, at the option of the party of the first part, on any interest day after the first day of December, 1913, at one hundred and ten per cent. of their face plus accrued interest, provided that thirty days' notice of such redemption shall be given the holders thereof, by notice published once a week for four consecutive weeks prior to such redemption, in a newspaper in New York City. If said bonds are registered, then a copy of the said notices shall be sent to the post-office address of the parties in whose names said bonds are registered.

Whenever it is desired to redeem any of said bonds, the Board of Directors of the Compressor Company shall pass a resolution setting forth the amount of bonds (at their par value) desired to be redeemed. The President of the Compressor Company shall thereupon draw by lot the numbers of the bonds to be redeemed, and he shall thereupon certify that such bonds were drawn for redemption, which certificate shall be entered upon the minutes of the Compressor Company, and a duplicate copy shall be delivered to the Trustee. Said bonds having been so drawn for redemption shall become due and payable on the succeeding interest payment date, provided that the date of first publication and the date of mailing notice to registered holders of bonds hereinbefore provided for shall have been not less than thirty days prior to such interest payment date, and the said bonds shall from such interest payment date, cease to draw interest, and the said Compressor Company may, upon the deposit of the proper amount with the Trustee, be privileged to consider said bonds as paid and canceled.

Sixteenth.—The Trustee may resign the trust hereby created upon giving sixty days' notice in writing to the Compressor Company. In case of the resignation of the Trustee, or of its dissolution or insolvency, or removal for cause as Trustee hereunder, it shall be the duty of the Compressor Company to call a meeting of the bondholders by printed notice, published in two of the public newspapers of New York City, once a week for three consecutive weeks next preceding such meeting, calling such meeting to be held in the said City of New York, and by mailing notice of the same to each of the registered bondholders not less than ten days before the date of such meeting. At the time and place specified in such notice, the holders of said bonds, in such meeting assembled, shall organize and proceed to elect a suitable corporation to act as Trustee under this agreement, and a majority in amount of such bonds legally represented at such meeting shall be competent to elect such new Trustee, and the corporation so elected shall immediately upon election and on its acceptance in writing of such trust become vested with all the estate, trusts, rights, powers and duties of the present Trustee herein, and shall be entitled to receive from the present Trustee or its legal representatives all moneys, mortgages and assurances appertaining or relating to this trust and the due execution thereof.

Seventeenth.—It is covenanted and agreed by the parties hereto, and

all the holders of bonds hereunder, as conditions precedent to the acceptance of the said trust by the said Trustee, or any successor thereto, as follows:

The Trustee shall not be answerable for any act, default, neglect or misconduct of any of its agents or employees, by it appointed or employed, in connection with the execution of any of the said trusts, nor in any other manner answerable or accountable, under any circumstances whatsoever, except for bad faith. The recitals contained herein, or in the bonds, as to priority of lien, or any other matter whatsoever, are made by and on the part of the Compressor Company, and the Trustee assumes no responsibility for the correctness of the same. It shall not be the duty of the Trustee to file or record at any time this deed of trust or any other mortgages or deeds of trust that may be required hereunder, nor to do any other act or acts suitable and proper to be done for the creation or continuance of the lien or liens thereby intended, nor to effect insurance against fire or explosion, nor to renew any policies of insurance, nor to keep itself informed as to the payment of any taxes or assessments, nor to require such payments to be made. The Trustee may, however, in its discretion, do any or all of these things. Neither shall the Trustee be held responsible for the nature or amount of the security mortgaged to it hereunder. The Trustee shall not be compelled to take any action, as Trustee, under this mortgage, unless properly requested and in every respect indemnified to its full satisfaction. The Trustee shall be entitled to reasonable compensation for all services rendered hereunder or in connection with the trust. This compensation, together with any and all necessary and reasonable expenses, charges, counsel fees and other disbursements incurred by the Trustee in the discharge of its duties, as such, shall be paid by the Compressor Company, or out of the trust estate upon which they are hereby made a lien, prior to that of the bonds issued hereunder. The Trustee shall be protected in acting upon any notice, consent, request, certificate, bond or other paper or document believed by it to be genuine and signed by the proper party. The Trustee shall be held responsible for the due authentication by certificate of the bonds issued hereunder, and for the custody and disposition, as herein provided, of the securities and moneys received by it hereunder.

Eighteenth.—It is covenanted and agreed between the parties hereto that the words "Compressor Company" when used in these presents mean the party issuing the bonds herein referred to; that the word "Trustee" means the corporation charged with the execution of the trust herein, whether the same be the Securities Trust Company of the City of New York, or any successor or successors in the trust hereby created; that the word "bonds" means the bonds issued hereunder; and the words "Trustee," "bond," "bondholder" and "holder" shall include the plural as well as the singular number and the term "majority" shall signify the majority in amount.

Nineteenth.—It is covenanted and agreed that this indenture may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Maxwell Compressor Company has caused its corporate name to be hereunto subscribed by its President and its corporate seal to be affixed and attested by its Secretary, and the SECURITIES TRUST COMPANY OF THE CITY OF NEW YORK, in token of its acceptance of the trust hereby created, has caused its corporate name and seal to be hereunto affixed by its President, and

attested by its Secretary, on this twelfth day of November, one thousand nine hundred and eight.

MAXWELL COMPRESSOR COMPANY,
By HOWARD M. MAXWELL,
President.

{ CORPORATE SEAL. }

ATTEST:
FRANK PAULSON,
Secretary.

SECURITIES TRUST COMPANY OF THE CITY OF NEW YORK,
As Trustee.
By MALCOLM McDOUGALD,
President.

{ CORPORATE SEAL. }

ATTEST:
FRANK G. COOPER,
Secretary.

(*Notarial acknowledgment by president of each corporation as given in Form* 178.)

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It will be understood that the preceding form has, on account of space limits, been reduced to its simplest terms. It is, however, a good working model and will afford an excellent basis upon which to build up a more elaborate instrument when required.

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